TIGARD CITY COUNCIL
MEETING

SEPTEMBER 13, 2005 6:30 p.m.

TIGARD CITY HALL
13125 SW HALL BLVD
TIGARD, OR 97223

CITY OF TIGARD
OREGON

PUBLIC NOTICE:

Anyone wishing to speak on an agenda item should sign on the appropriate sign-up sheet(s). If no sheet is available, ask to be recognized by the Mayor at the beginning of that agenda item. Citizen Communication items are asked to be two minutes or less. Longer matters can be set for a future Agenda by contacting either the Mayor or the City Manager.

Times noted are estimated; it is recommended that persons interested in testifying be present by 7:15 p.m. to sign in on the testimony sign-in sheet. Business agenda items can be heard in any order after 7:30 p.m.

Assistive Listening Devices are available for persons with impaired hearing and should be scheduled for Council meetings by noon on the Monday prior to the Council meeting. Please call 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

Upon request, the City will also endeavor to arrange for the following services:

- Qualified sign language interpreters for persons with speech or hearing impairments; and

- Qualified bilingual interpreters.

Since these services must be scheduled with outside service providers, it is important to allow as much lead time as possible. Please notify the City of your need by 5:00 p.m. on the Thursday preceding the meeting by calling: 503-639-4171, ext. 2410 (voice) or 503-684-2772 (TDD - Telecommunications Devices for the Deaf).

SEE ATTACHED AGENDA

A G E N D A
TIGARD CITY COUNCIL MEETING
SEPTEMBER 13, 2005

6:30 PM

- STUDY SESSION

  > BRIEFING ON MANAGEMENT GROUP COST OF LIVING (COLA) AND COMPENSATION
  - Administration Staff

  > DISCUSSION OF COUNCIL RETREAT
  - Administration Staff

- EXECUTIVE SESSION: The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

7:30 PM

1. BUSINESS MEETING
   - 1.1 Call to Order - City Council & Local Contract Review Board
   - 1.2 Roll Call
   - 1.3 Pledge of Allegiance
   - 1.4 Council Communications & Liaison Reports
   - 1.5 Call to Council and Staff for Non-Agenda Items

2. PROCLAMATIONS
   - Mayor Dirksen
   - 2.1 Proclaim September 17 to 23, 2005 as Constitution Week

3. CITIZEN COMMUNICATION (Two Minutes or Less, Please)
   - Tigard High School Student Envoy Representative
     (Krista Foltz is not able to attend.)
   - Follow-up on Previous Citizen Communication
   - Follow-up on Fifth Tuesday Meeting

4. CONSENT AGENDA: These items are considered to be routine and may be enacted in one motion without separate discussion. Anyone may request that an item be removed by motion for discussion and separate action. Motion to:

   4.1 Approve Council Minutes for August 9 and 16, 2005
   4.2 Receive and File:
      a. Council Calendar
      b. Council Meeting Tentative Agenda
   4.3 Approve Budget Amendment #1 to the FY 2005-06 Budget to Increase Appropriations in the Water, Water CIP, and Water SDC Funds for Funding of Certain Capital Water Projects – Resolution No. 05 - _____
   4.4 Approve Budget Amendment #2 to the FY 2005-06 Budget to Carry Over Funds in the Public Works Program for Replacement of Vehicles – Resolution No. 05 - _____
   4.5 Approve Budget Amendment #3 to the FY 2005-06 Budget to Increase Appropriations in the Street Maintenance Division Budget for Purchase of a Sign Plotter and Computer – Resolution No. 05 - _____
   4.6 Amend the November 14, 2002 License Agreement for Maintenance of the Fields Property East of the Library Site
   4.7 Authorize the City Manager to Relinquish Temporary Emergency Turnaround Easements at Arbor Pointe Subdivision
   4.8 Approve the Submission of an Application for a Washington Square Mall Buffer Zone Protection Plan Grant
   4.9 Adopt the National Incident Management System as the Foundation for Incident Command, Coordination, and Support Activities and Establishing Policy that Will Provide Training for Responsible City Personnel – Resolution No. 05 - _____
   4.10 Local Contract Review Board:
      a. Award a Contract for the Construction of the SW Ash Avenue Sanitary Sewer (Sewer Reimbursement District No. 35) to NW Kodiak Construction, LLC

- *Consent Agenda - Items Removed for Separate Discussion: Any items requested to be removed from the Consent Agenda for separate discussion will be considered immediately after the Council has voted on those items which do not need discussion.*

5. INDONESIAN RESOURCE CITIES EXCHANGE REPORT
   a. Staff Report: Library Staff
   b. Council Discussion

6. *Continued from the August 23, 2005, City Council meeting –*
   CONSIDERATION OF THE FINAL ORDERS REGARDING THE ANNEXATION OF THE FOLLOWING FOUR PROPERTIES:

FILE NO.: FILE TITLE:	ZONE CHANGE ANNEXATION (ZCA) 2004-00004 MOUNTAIN VIEW ESTATES SUBDIVISION ANNEXATION
REQUEST:	The applicant is requesting to annex two (2) parcels of land containing 6.94 acres into the City of Tigard.
LOCATION:	12415 SW Beef Bend Road, WCTM 2S110CB, Tax Lot 500; and (No site address), WCTM 2S110CB, Tax Lot 100.
FILE NO.: FILE TITLE:	ZONE CHANGE ANNEXATION (ZCA) 2005-00001 ARLINGTON HEIGHTS 3 SUBDIVISION ANNEXATION
REQUEST:	A request to annex three (3) parcels of land containing 16.97 acres into the City of Tigard.
LOCATION:	On the north side of SW Beef Bend Road and the southern terminus of SW Summerview Drive. WCTM 2S109DA, Tax Lot 2100; and 2S110CB, Tax Lots 600 and 700.
FILE NO.: FILE TITLE:	ZONE CHANGE ANNEXATION (ZCA) 2005-00002 WILSON RIDGE SUBDIVISION ANNEXATION
REQUEST:	A request to annex two (2) parcels of land containing 2.68 acres into the City of Tigard.
LOCATION:	13350 and 13400 SW Bull Mountain Road; WCTM 2S109AC, Tax Lots 100 and 200.

FILE NO.:	ZONE CHANGE ANNEXATION (ZCA) 2005-00003
FILE TITLE:	ALBERTA RIDER SCHOOL/SUMMIT RIDGE SUBDIVISION ANNEXATION
REQUEST:	Annexation of 56 parcels containing approximately 20.75 acres into the City of Tigard.
LOCATION:	Alberta Rider School: WCTM 2S109AC, Tax Lot 2100 and 2S109AD, Tax Lot 1300; and Remaining Portions of Summit Ridge Subdivision: WCTM 2S109DA, Tax Lots 8500, 8600, 8700, 8800, 9400, 9500, 9600, 9700, 9800, 9900, 10000, 10100, 10200, 10300, 11500, 11600, 11700, 11800, 11900, 12000, 12100, 12200, 12300, 12400, 12500, 12600, 12700, 12800, 12900, 13000, 13400 and 13500, and WCTM 2S109DB, Tax Lots 1000, 1900, 2100, 2200, 2300, 2400, 2500, 2600, 2700, 2800, 2900, 3000, 3100, 3200, 3300, 3400, 3500, 3600, 3700, 3800, 3900 and 4000.

ZONING OF ALL PARCELS: R-7: Medium-Density Residential District. The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of 10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.

APPLICABLE REVIEW CRITERIA*:* The approval standards for annexations are set out in Community Development Code Chapters 18.320 and 18.390, Comprehensive Plan Policies 2 and 10; ORS Chapter 222; and Metro Code Chapter 3.09.

a. Summation by Community Development Staff
b. Council Discussion
c. Council Consideration:
   Ordinance No. 05 - _____ (Mountain Estates Subdivision Annexation)
   Ordinance No. 05 - _____ (Arlington Heights 3 Subdivision Annexation)
   Ordinance No. 05 - _____ (Wilson Ridge Subdivision Annexation)
   Ordinance No. 05 - _____ (Alberta Rider School/Summit Ridge Annexation)

7. PUBLIC HEARING (QUASI-JUDICIAL) TO CONSIDER AN ORDINANCE ADOPTING FINDINGS TO GRANT A BALLOT MEASURE 37 WAIVER OF THE R-25 ZONING RESTRICTIONS FOR A PROPERTY AT THE INTERSECTION OF SW SCHOLLS FERRY ROAD AND 135TH AVENUE

CLAIM:
The Claimant seeks a waiver and/or change in the underlying zoning and comprehensive plan designation on a 10.45 acre site from the present high-density R-25 residential zoning to C-C or C-G commercial zoning to allow a commercial shopping center, various tenants/uses, as well as retail sales, vehicle fuel sales and signage of the C-C or C-G commercial zone. The amount claimed as compensation without such waiver or change is $4,562,360.00.

AFFECTED REGULATION:
Residential R-25 zoning; Comprehensive Plan designation as residential; Transportation System Plan and Development Code access restrictions; any other zoning and building code restrictions or overlay zones that preclude a commercial use; sign code restrictions.

LOCATION:
Lot 63, Hawk's Beard Townhomes; WCTM 1S133AC, Tax Lot 14500. On the south side of SW Scholls Ferry Road, between SW 130th and 135th Avenue.

ZONING DESIGNATION:
R-25: Medium High-Density Residential District. The R-25 zoning district is designed to accommodate existing housing of all types and new attached single-family and multi-family housing units at a minimum lot size of 1,480 square feet. A limited amount of neighborhood commercial uses are permitted outright and a wide range of civic and institutional uses are permitted conditionally.

APPLICABLE REVIEW CRITERIA:
Tigard Municipal Code Chapter 1.20.

a. Open Public Hearing
b. Rules of Procedure
c. Declarations or Challenges
d. Staff Report: Community Development Staff
e. Public Testimony
   - Proponents
   - Opponents
   - Rebuttal
f. Staff Recommendation

g. Council Discussion
h. Close Public Hearing
i. Council Consideration: Ordinance No. 05 - _____

8. CONSIDER APPOINTING CRAIG PROSSER AS TIGARD CITY MANAGER
   a. Staff Report: Administration Staff
   b. Public Comment
   c. Council Discussion
   d. Council Consideration: Motion to appoint Craig Prosser as Tigard City Manager and authorize the Mayor to sign the corresponding employment agreement.

9. LOCAL CONTRACT REVIEW BOARD (LCRB) ITEM
   Removed from the August 9, 2005 consent agenda for separate consideration - CONSIDER AUTHORIZING REIMBURSEMENT TO VENTURE PROPERTIES FOR WATERLINE CONSTRUCTION THROUGH SUMMIT RIDGE SUBDIVISION DEVELOPMENT
   a. Staff Report: Public Works Staff
   b. Council Discussion
   c. LCRB Consideration: Motion to authorize reimbursement to Venture Properties for the construction of a large diameter transmission waterline through the Summit Ridge Subdivision development.

10. COUNCIL LIAISON REPORTS

11. NON AGENDA ITEMS

12. EXECUTIVE SESSION: The Tigard City Council may go into Executive Session. If an Executive Session is called to order, the appropriate ORS citation will be announced identifying the applicable statute. All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public.

13. ADJOURNMENT

❋ ❋ ❋ ❋ ❋ ❋ ❋ ❋ ❋ ❋

A CITY CENTER DEVELOPMENT AGENCY
- AN URBAN RENEWAL AGENCY –
MEETING WILL FOLLOW THE CITY COUNCIL MEETING

❋ ❋ ❋ ❋ ❋ ❋ ❋ ❋ ❋ ❋

PROCLAMATION

Constitution Week

WHEREAS, September 17, 2005, marks the two-hundred-eighteenth anniversary of the drafting of the Constitution of the United States of America by the Constitutional Convention; and

WHEREAS, it is fitting and proper to accord official recognition to this magnificent document and its memorable anniversary; and to the patriotic celebration which will commemorate the occasion; and

WHEREAS, Public Law 915 guarantees the issuing of a proclamation each year by the President of the United States of America designating September 17 through 23 as Constitution Week.

NOW THEREFORE BE IT RESOLVED THAT I, Craig Dirksen, Mayor of the City of Tigard, Oregon, do hereby proclaim the week of September 17 through 23, 2005 as

Constitution Week

in Tigard, Oregon and encourage all citizens to reaffirm the ideals of the Constitution by vigilantly protecting the freedoms guaranteed to us through this guardian of our liberties.

Dated this _____ day of _____, 2005.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of the City of Tigard to be affixed.

_____
Craig Dirksen, Mayor
City of Tigard

Attest:

_____
City Recorder

Agenda Item No. 4.1
For Agenda of 9-13-05

COUNCIL MINUTES
TIGARD CITY COUNCIL MEETING
AUGUST 9, 2005

Mayor Dirksen called the meeting to order at 6:31 p.m.

City Council Present: Mayor Dirksen and Councilors Sherwood, Wilson and Woodruff.

- STUDY SESSION

> Administrative Items:

- Procedural Review for the Quasi-Judicial Hearing (Agenda Item No. 7)

  City Attorney Ramis reviewed procedure for the combined hearing for four annexation proposals. The purpose is to be more efficient insofar as the reading of the initial process information would not have to be done four times and people would not have to state their testimony four times. The idea is to have one proceeding with the City Council making four separate decisions after the case closes. The main thing to remember is that the City Council is deciding the land uses cases on the criteria; the fundamental conduct of the hearing is like a land use case. Findings will need to be adopted, whether the City Council approves or deny. The venue for appeal is the Land Use Board of Appeals (LUBA). City Attorney Ramis suggested that if there was a great deal of testimony, the City Council might want to make a tentative decision, give direction to staff and then staff come back with a final set of findings for the City Council to adopt.

  Mayor Dirksen referred to the process as outlined on the agenda. City Attorney Ramis noted that if the City Council is prepared to adopt the final decisions for the ordinances, the staff has some amendments to the findings, which have been provided to the City Council. The proposed amendments were distributed. City Attorney Ramis noted this supplemental information addressed the requirements of ORS 222, which is the Chapter applying to the annexation procedures for these proposals.

  Also distributed to the City Council was written testimony received by e-mail on August 9, 2005, from Les and Ellen Godowski, 14630 SW 139th Avenue, Bull Mountain, Oregon.

- August 18 Meeting with Senate Environmental and Public Works Staff – Tualatin River Refuge (Council received a copy of an e-mail

communication to Assistant to the City Manager Newton from the President of the Friends of the Refuge Norman Penner). Interim City Manager Prosser reviewed this invitation. Mayor Dirksen, Councilor Sherwood and Councilor Woodruff advised they would try to attend.

- Council Agenda Revised – Interim City Manager Prosser noted that Mayor Dirksen requested Consent Agenda Item 3.3b. be set over to August 23, 2005.

- Councilor Woodruff noted that the Intergovernmental Water Board meets on the second Wednesday of every month and this conflicts with his work schedule. He noted he would not be able to attend the September or October meeting. Councilor Sherwood said she could attend the September 14 and October 12 meetings.

- Council Calendar:
  - August 16 Council Workshop Meeting – 6:30 p.m. – Town Hall
  - August 23 Council Business Meeting – 6:30 p.m. – Town Hall
  - August 30 5th Tuesday Council Meeting – 7-9 p.m. – Tigard Water Auditorium

EXECUTIVE SESSION: The Tigard City Council went into Executive Session at 6:38 p.m. to consider employment of a public officer, employee, staff member or individual agent and pending litigation under ORS 192.660(2)(a)(h).

Executive Session concluded at 7:37 p.m.

1. BUSINESS MEETING
   - 1.1 Mayor Dirksen called the City Council & Local Contract Review Board meeting to order at 7:43 p.m.
   - 1.2 City Council Present: Mayor Dirksen and Councilors Sherwood, Wilson and Woodruff.
   - 1.3 Pledge of Allegiance
   - 1.4 Council Communications & Liaison Reports: None
   - 1.5 Call to Council and Staff for Non-Agenda Items: None

2. CITIZEN COMMUNICATION

   - Thomas Bush, 13845 SW 158th Terrace, Tigard, OR 97224, said he lives in unincorporated Washington County, at the west end of Bull Mountain. He said he believes there are deficiencies in the Tigard Development Code, particularly as it appears to prioritize connectivity over safety. The Code also does not seem to recognize that the width of the road contributes to safety and this is particularly true on steep roads. He urged that something be done about this. He asked what process is in

place so someone, such as he, could contribute to advocating those changes.

Mayor Dirksen asked if Mr. Bush has some specific streets in mind. Mr. Bush noted that there is an appeal process in place on the street he is most concerned about, so he has chosen not to speak about this. Mayor Dirksen suggested that Mr. Bush contact Community Development Director Hendryx about the process.

- Mary Bush, 13845 SW 158th Terrace, Tigard, OR 97224 asked who was responsible for the upkeep of the dedicated road in a subdivision? In response to a question from Mayor Dirksen, Ms. Bush confirmed that the road is in unincorporated Washington County. The road is the responsibility of the County.

- Tyler Van Domelen and Eric Wiering, recent Tigard High School graduates, spoke to the City Council about the proposed Tigard Skate Park. They recently learned the skate park did not receive a grant they were hoping to receive. Mr. Van Domelen said he hoped there might be a "Plan B" offered by the City to help move the skate park forward. Mr. Wiering said they have noticed many towns smaller than Tigard have city skate parks. He noted the supporters of the skate park have raised $35,000.

  Councilor Sherwood noted that a number of people are working behind the scenes to help with this effort. She said that by coming to this meeting, Mr. Van Domelen and Mr. Wiering are doing what is needed, which is to get the word out to the community about the need for assistance.

  Mayor Dirksen noted he is frustrated that the skate park has taken so long to move forward. He said he was disappointed that the grant was not awarded for the skate park and the City is reevaluating how to move ahead. It would be helpful if there was more of a demonstration of community support for funding for the skate park. He agreed with Councilor Sherwood that Mr. Van Domelen's and Mr. Wiering's attendance at this meeting was the best thing they could do to appeal to the community. He noted they need to make their case to the community.

- Bill Gerkin, 15885 SW Alderbrook Circle, Tigard, OR 97224, said he represented the senior community supporters of the skate park. He said he got involved because he believes that many skate boarders are at a crossroads with regard to the activities they might become involved in – some of which are unacceptable. A skate park would give these young people something to do that they want. He noted there are many other

towns that have skate parks and doesn't know why it has taken so long for Tigard. He said he has personally raised over $6000 by contacting businesses, friends, and service organizations. He asked the City Council to assist. At this time there are about 99 contributors and 13 of those are in-kind contributors. They have about $35,000, with a goal of $105,000. Mr. Gerkin said they need some help from the community. Meetings are held every two weeks, yet, there are only a handful of people who attend. He asked for support of the skate park; "it's past time."

Mayor Dirksen noted his appreciation of Mr. Gerkin's efforts. He agreed that young people at this age need a healthy outlet. He said it is with some personal embarrassment that a city the size of Tigard cannot seem to build a skate park. He said he would like to see the community get behind this idea.

Councilor Sherwood added that over a third of the skate park contributors are from the Summerfield retirement community.

Councilor Woodruff thanked the core group of people that have been involved in this effort for a long time. He said he hoped that people watching this meeting who were not aware of this effort, would do what they could to get the word out about this need.

- Gretchen Buehner, 13249 SW 136th Place, spoke about library parking issues. A number of spaces designated for compact cars are continually being used by people driving SUVs. For example, this evening there were two spaces that could not be used because SUVs were parked in the compact car area and were too large for the spaces. She reported that at 7:10 p.m. this evening, there were 15 SUVs parked in the compact car spaces. This is causing back ups in the parking lot.

  Interim City Manager Prosser said this would likely take policing action. He will check with the Police Department to determine what could be done.

  Councilor Woodruff noted there isn't enough parking at the Library and that if Wall Street is constructed, there are plans to provide additional parking spaces.

- Ken Henschel, 14530 SW 144th Avenue, Bull Mountain, OR, said he was speaking as CPO 4B Chair and that they collected some money for the skate park. In response to his inquiry, he was advised he could give the money collected to Rich Carlson, Chair of the Skate Park Task Force. Mayor Dirksen noted his appreciation of the CPO 4B members' contribution.

- Follow-up to Previous Citizen Communication (from the July 26, 2005, City Council meeting):

  Interim City Manager Prosser noted Gretchen Buehner spoke about Bull Mountain Road being brought up to City standards for that section of this road that is within the City of Tigard. Ms. Buehner suggested the City take over jurisdiction of part of the road. Interim City Manager Prosser noted that the City Council plans to meet with Washington County officials on August 16, and suggested the topic could be discussed at that time.

  Interim City Manager Prosser said that Mr. Frewing had raised concerns about condition of a property in his neighborhood. The subject property is under continuing enforcement action, which is now in Municipal Court. Mr. Frewing had asked for additional information about where this was in the court system process – staff has provided this information to him.

  Interim City Manager Prosser noted Mr. Frewing also spoke about concerns about a development in the unincorporated Metzger area where he would like to see trail property set aside through area. Interim City Manager Prosser said, unfortunately, neither the County nor the City Master Plans included an area for a trail at this location. Therefore, this is an issue that cannot be addressed. Mr. Frewing has also spoken to the County.

Tigard Youth Advisory Council President Rob Williams reviewed the following Consent Agenda items:

3. CONSENT AGENDA:

   3.1 Approve Council Minutes for July 12, and 19, 2005
   3.2 Receive and File:
      a. Council Calendar
      b. Council Meeting Tentative Agenda
   3.3 Local Contract Review Board:
      a. Award Contract to Brix Paving for the Construction of the FY 2005-06 Pavement Major Maintenance Program (PMMP) – Phase 1
      ~~b. Authorize Reimbursement to Venture Properties for Waterline Construction Through Summit Ridge Subdivision Development~~

Interim City Manager Prosser noted that Item 3.3b above has been removed from the Consent Agenda; it will be resubmitted to Council for consideration on August 23, 2005.

Motion by Councilor Wilson, seconded by Councilor Sherwood, to approve the Consent Agenda with Item 3.3b removed.

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

4. METRO COUNCILOR HOSTICKA TO PRESENT INFORMATION ON METRO'S OPEN SPACES, TREASURED PLACES CELEBRATION

Metro Council President Bragdon was present to review this item as Councilor Hosticka was out of town, but sent his regards. President Bragdon's presentation included the following:

- It's been 10 years since the voters approved the greenspaces funding.
- More than 8000 acres of greenspaces has been acquired.
- Some local share money went directly to local jurisdictions, including Tigard.
- There was a focus on the Fanno Creek greenway to connect 15 miles of trail.
- Tualatin River has access points for canoe trips. Five sites have been purchased along the Tualatin, including a location in Tigard.
- Eight acres have been purchased adjacent to Cook Park.
- A brief review of sites acquired to supplement the natural areas throughout the region.
- Celebration in the first 10 days of September to thank the voters, which will include a series of events.
- Groups are meeting and discussing the possibility of renewing the greenspaces measure in 2006.
- Commitment to a local share component for a future measure.
- Metro officials will return to the Council in the fall to submit proposals/ideas for a renewed funding measure.

Councilor Woodruff asked how many of the 8000 acres are in the Tigard area. President Bragdon noted about 400 acres are located along the Tualatin River, and in Tigard City limits, there were about 50 or 60 acres acquired. He noted there are some large sites within a short drive and referred to the Cooper Mountain site of 280 acres just outside of Beaverton. Community Development Director Hendryx noted the total pass-through amount to Tigard was $758,000. Tigard purchased 16 acres within the City and built 1800 lineal feet of greenway trails. In addition, 23 acres for greenspaces were acquired using Metro funds (Brown property, Woodard Park property).

Councilor Woodruff noted that one of the City Council's goals is to increase the amount of parks and open spaces and the City will continue to look to Metro to help wherever possible. Councilor Woodruff referred to the skate park and asked if there were any additional dollars available for this project? President Bragdon said there were no funds remaining. It is hoped the new bond measure would be before the voters in 2006.

Mayor Dirksen asked if the focus will again be on greenspaces and open spaces. President Bragdon reported that the regional money focused on natural areas; however, the funding earmarked for local jurisdictions had more flexibility.

President Bragdon confirmed Councilor Wilson's statement that the package to be presented to voters would be put together over the next few months and could possibly be more ambitious. President Bragdon noted they realize there are other needs in the region requiring resources including law enforcement and education that communities are addressing as well. While not advocating one way or the other, Councilor Wilson asked if Metro would consider a restriction that purchases be inside the urban growth boundary. President Bragdon confirmed this would be discussed. He noted larger, less expensive sites are often located outside the urban growth boundary.

5. SET OVER TO THE AUGUST 23, 2005, CITY COUNCIL MEETING THE CONSIDERATION OF THE FINAL ORDER REGARDING THE APPEAL OF CONDITIONAL USE PERMIT FOR THE TIGARD FIRST BAPTIST CHURCH EXPANSION

ITEM ON APPEAL: On April 25th, 2005 the Tigard Hearing's Officer held a public hearing to consider an application for conditional use approval to construct a 22,500 square foot expansion of the existing church and associated parking in three phases. As part of Phase 2, the applicant proposed to relocate the existing driveway on SW Gaarde Street. The Hearing Officer adopted findings approving the Conditional Use Permit and Sensitive Lands Reviews and denied the requested Adjustment to the access spacing standards. An appeal was filed on May 25, 2005 by the owner and applicant, on the basis that the Hearing's Officer misconstrued the applicable law. More specifically, the appellant's argue that the Hearing Officer's decision failed to balance the approval criteria.
LOCATION: 11075 SW Gaarde Street; WCTM 2S103DC, Tax Lot 1100.
ZONE: R-3.5: Low-Density Residential District.
REVIEW CRITERIA BEING APPEALED: Community Development Code Chapters 18.370 and 18.705.

Community Development Director Hendryx advised the final order was not presented in sufficient time to prepare it for the City Council's consideration

at this meeting. Staff recommends City Council continue this item to August 23, 2005.

Motion by Councilor Sherwood, seconded by Councilor Woodruff, that the consideration of the final order appeal of the Conditional Use Permit for the Tigard First Baptist Church expansion be set over to August 23.

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

6. INFORMATIONAL PUBLIC HEARING – FORMATION OF SANITARY SEWER REIMBURSEMENT DISTRICT NO. 35 (SW ASH AVENUE)

a. Mayor Dirksen opened the public hearing.

b. City Engineer Duenas presented the staff report. His review included a PowerPoint presentation, which is on file in the City Recorder's office. His review included a history of the sewer reimbursement program designed to extend service to all non-sewered areas of the City. For Fiscal Year 2005-06, it is projected about 151 new services will be established. If formed, this District would provide nine connections, and is the last area in this part of the City that does not have sewer service.

A neighborhood meeting was held on July 6, 2005. At that time staff presented the program to the District residents to answer questions and address concerns.

The estimated project cost is $110,215. The estimated reimbursement fee per owner is about 55.5590 cents per square foot. City Engineer Duenas explained the incentive program whereby the City participates in paying for a portion of the costs if a District property connects to the sewer within three years of finalization. Additional fees include a $2235 connection/inspection fee and approximately $50 every two months as a charge for operation and maintenance of the entire sewer system. There are also costs for installation and connection to the sewer.

The project will begin this fall. Final costs will be based on the actual construction costs. Finalization of the District will be brought to the Council after all work has been completed and the actual costs are known.

Councilor Woodruff asked if all the property owners were present at the informational meeting on August 9. City Engineer Duenas said he understood that most property owners were present. He said some concerns were brought up at that time. He advised that one of property owner for one of the lots to be included in the District indicated they could hook onto sewer at Garrett Street, so this lot was removed from the District.

c. Public Testimony

- Cleon Cox III, 13580 SW Ash Avenue, Tigard, OR 97223, advised he attended the July 6 informational meeting, as did most of the neighbors. He said they were told that if a majority does not want enter into this, it will not go through. City Engineer Duenas advised that was not correct. He said the District would be formed whether people want to hook on or not, but noted that people do not have to hook onto the sewer. Those that want to hook on, must pay their share as provided in the program along with the attendant fees. City Engineer Duenas explained the City's program is to extend sewer to all unsewered, but developed properties of the City. He noted the previous program was based on who needs the sewer, but if one person experiences a failed system, this is basically a reason to extend sewer to an area. The City decided to develop a systematic approach, which resulted in a five-year program.

  Mr. Cox and City Engineer Duenas discussed what constitutes a failed system. Mr. Duenas confirmed that if a system fails, the County does not issue permits for a new septic system if sewer is available.

  Mr. Cox asked if an environmental impact study was done to determine what the cost is if everyone needed to replace the fields. Is it more cost effective than extending the sewer system? City Engineer Duenas said the City is being proactive by providing sewer to residents who might need it. The incentive program is available to encourage people to hook on earlier; however, a property owner is not required to hook on. City Engineer Duenas said it is environmentally responsible to extend sewer to areas and not to depend on septic systems. There was discussion on why this was environmentally preferable.

  Mr. Cox asked why a full bond measure could not have been placed before the voters for providing sewer. He said this is impacting people who are on fixed incomes. Mayor Dirksen said

he did not know that this was not reviewed earlier. He referred to the creation and implementation of the program, which had been reviewed by Council members some years earlier. In effect the program is voluntary, no one is required to hook up to the sewer. If one does not hook up within 15 years of finalization of the district, no payment of the installation is required. City Engineer Duenas added there is a fairness issue in that other residents have paid for their sewer service through one means or another. Why should the rest of the City pay into a bond to extend sewer to people who have already paid for their own? Mr. Cox argued that this didn't make sense and noted other instances where he may or may not use services; i.e., the library and schools. He said he understands the City has to determine how to pay for this but noted he would have preferred for other alternatives to have been made available to the property owners.

Discussion followed on fees. The connection fee and the sewer fee that's included in the water bill are based on water usage. Mr. Cox said his water usage would increase because his current leach lines water trees in his yard.

Mr. Cox noted he talked with the City about this issue in 2001 and felt that the attitude was that it was going to happen regardless. He questioned whether a sewer system was actually environmentally preferable. He said he had not heard anything additional on this program until recently. City Engineer Duenas advised that a citywide meeting was held when this program was started to explain how the program would work. Mr. Cox said he was not aware of the meeting and questioned how people were notified. City Engineer Duenas referred to some of the means of notification including newspaper announcements and an announcement in the City's newsletter, the *Cityscape.*

Mr. Cox said the majority of the people in this proposed district are upset about this proposal. He referred to other issues he has had in the past, including speed humps, and questions whether appropriate study is being done.

Mr. Cox said the property owners really have no options if their septic tanks fail.

Mr. Cox submitted a letter from Sean and April Yarger, 13585 SW Ash Avenue, Tigard, Oregon noting their opposition to the formation of the District. This letter is on file in the City Recorder's office.

d. Staff Recommendation

City Engineer Duenas advised that staff recommended City Council approve a resolution forming Reimbursement District No. 35, SW Ash Avenue.

e. Council Discussion

Councilor Woodruff asked about the number of districts formed. City Engineer Duenas advised that 659 services were identified and there are about 300 remaining. He noted about 150 services are planned for this year. Approximately ten districts have been formed under the current reimbursement district program. People will hook on as they feel the need or want to participate in the incentive program. Within these finalized districts, the sewer is available when wanted and the City does not need to be in a reactive mode when a property owner has a need to connect to the sewer.

Councilor Wilson noted the City Council continues to hear comments similar to those raised by Mr. Cox. He said the concerns are related to the amount of money required to hook up to the sewer system. Councilor Wilson said he continues to think the program is a good deal and it's voluntary unless someone's system fails.

Councilor Sherwood noted she has had people tell her that they were appreciative of the sewer reimbursement program, which was available to them when their system failed.

f. Mayor Dirksen closed the public hearing.

g. Council Consideration:

Motion by Councilor Wilson, seconded by Councilor Sherwood, to adopt Resolution No. 05-51.

RESOLUTION NO. 05-51 – A RESOLUTION ESTABLISHING SANITARY SEWER REIMBURSEMENT DISTRICT NO. 35 (SW ASH AVENUE)

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

7. PUBLIC HEARING (QUASI-JUDICIAL) TO CONSIDER ANNEXATION OF THE FOLLOWING FOUR PROPERTIES:

FILE NO.: FILE TITLE:	ZONE CHANGE ANNEXATION (ZCA) 2004-00004 MOUNTAIN VIEW ESTATES SUBDIVISION ANNEXATION
REQUEST:	The applicant is requesting to annex two (2) parcels of land containing 6.94 acres into the City of Tigard.
LOCATION:	12415 SW Beef Bend Road, WCTM 2S110CB, Tax Lot 500; and (No site address), WCTM 2S110CB, Tax Lot 100.
FILE NO.: FILE TITLE:	ZONE CHANGE ANNEXATION (ZCA) 2005-00001 ARLINGTON HEIGHTS 3 SUBDIVISION ANNEXATION
REQUEST:	A request to annex three (3) parcels of land containing 16.97 acres into the City of Tigard.
LOCATION:	On the north side of SW Beef Bend Road and the southern terminus of SW Summerview Drive. WCTM 2S109DA, Tax Lot 2100; and 2S110CB, Tax Lots 600 and 700.
FILE NO.: FILE TITLE:	ZONE CHANGE ANNEXATION (ZCA) 2005-00002 WILSON RIDGE SUBDIVISION ANNEXATION
REQUEST:	A request to annex two (2) parcels of land containing 2.68 acres into the City of Tigard.
LOCATION:	13350 and 13400 SW Bull Mountain Road; WCTM 2S109AC, Tax Lots 100 and 200.
FILE NO.: FILE TITLE:	ZONE CHANGE ANNEXATION (ZCA) 2005-00003 ALBERTA RIDER SCHOOL/SUMMIT RIDGE SUBDIVISION ANNEXATION
REQUEST:	Annexation of 56 parcels containing approximately 20.75 acres into the City of Tigard.
LOCATION:	Alberta Rider School: WCTM 2S109AC, Tax Lot 2100 and 2S109AD, Tax Lot 1300; and Remaining Portions of Summit Ridge Subdivision: WCTM 2S109DA, Tax Lots 8500, 8600, 8700, 8800, 9400, 9500, 9600, 9700, 9800, 9900, 10000, 10100, 10200, 10300, 11500, 11600, 11700, 11800, 11900, 12000, 12100, 12200, 12300, 12400, 12500, 12600, 12700, 12800, 12900, 13000, 13400 and 13500, and WCTM 2S109DB, Tax Lots 1000, 1900, 2100, 2200, 2300, 2400, 2500, 2600, 2700, 2800, 2900, 3000, 3100, 3200, 3300, 3400, 3500, 3600, 3700, 3800, 3900 and 4000.

ZONING OF ALL PARCELS: R-7: Medium-Density Residential District. The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of

10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.

APPLICABLE REVIEW CRITERIA: The approval standards for annexations are set out in Community Development Code Chapters 18.320 and 18.390, Comprehensive Plan Policies 2 and 10; ORS Chapter 222; and Metro Code Chapter 3.09.

Associate Planner Tracy of the Community Development Staff read the description of the four annexation proposals. Associate Planner Tracy noted this annexation hearing consists of four separate requests. The staff's presentation and the public testimony will be consolidated into one hearing. The City Council will then need to take separate actions on each of the four applications.

Associate Planner Tracy referred to a PowerPoint presentation, which is on file in the City Recorder's office. He reviewed a map of the current City limits and the proximity of the proposed annexation areas. He then described the areas to be annexed. All of the properties are in the general area between Bull Mountain Road and Beef Bend Road. The total area of the four annexations areas is 47.34 acres.

For the Mountain View Estates annexation, the previous owners and current owners petitioned the City for annexation and earlier subdivision approval for 22 lots. Prior to those lots being sold, annexation must occur. There are no longer any registered voters within this annexation territory.

For Arlington Heights 3 annexation, the current owners and all four registered voters have sign a petition for annexation. This property is in the early stages of subdivision review and, if approved, will be required to be annexed. There are 64 lots being proposed.

At this point, City Attorney Ramis noted the hearing had not yet been opened. Because the four hearings have been combined, the process is unusual. City Attorney Ramis referred to the agenda, which was also provided to the public. He recommended the Mayor begin by opening the public hearing. City Attorney Ramis said he would then describe the rules and procedures before coming back to finish the Staff Report.

a. Mayor Dirksen opened the public hearing.

b. City Attorney: Rules of Procedure

City Attorney Ramis noted for land use hearings, City of Tigard begins the process by reading a set of rules and processes so that participants in the hearing understand the rules and procedures. He noted if anyone had any questions about the process, they should not to hesitate to ask.

A copy of the rules of procedure of tonight's hearing has been available at the entrance of the hearing room. The staff report on this hearing has been available for viewing and downloading from the City's website and a paper copy of the staff report has been available in the Tigard Public Library for the last seven days. The Council's role is this hearing is to make a land use decision under existing laws. The Council cannot change the law for the land use application now under consideration. However, because these applications are for annexations, the City Council may also consider issues other than the applicable land use criteria and those are the criteria identified in the staff report.

Any person here tonight can offer testimony. Please wait until you are asked to speak by the Mayor and try to limit your remarks to the applicable approval standards for the application. Members of the City Council will be asked whether they have any conflicts of interest at the beginning of the hearing. And, if a Council member has an actual conflict the Council member will not participate. Council members must declare any contacts about this case with a member of the public. Council members must also declare if they have independent knowledge of relevant facts, such as a visit to the site in question. The Council member who describes ex parte contacts or independent information may still participate in the decision. After the discussion of conflicts and ex parte contacts, any person may challenge the participation of the Council member or rebut the statements made. The Council member in question may respond to such a challenge.

Tonight the staff will summarize the staff report and then the applicant and those in favor of the application will testify. After that, witnesses who oppose the application or have questions or concerns will testify. If there is opposition or if there are questions, there will be a response from City staff. The Council members may also ask the staff and witnesses questions throughout the hearing until the record closes.

After all testimony is taken, the Council may ask additional questions of the staff. After the record is closed, the City Council will deliberate about what to do about the application. During the deliberations, the City Council may reopen the public portion of the hearing if necessary to receive additional evidence before making a decision. You may testify orally or in writing before the close of the public record to preserve your right to appeal the Council's decision to the Land Use Board of Appeals. Failure to raise an issue clearly enough so that the Council understands it and can address the

issue, precludes an appeal on that issue. Failure to raise Constitutional or other issues related to the proposed Conditions of Approval, with sufficient specificity to allow a response precludes an action for damages in Circuit Court. Please do not repeat testimony offered by yourself or earlier witnesses. If you agree with a statement of an earlier witness, please just state that fact and add any additional comments of your own. Also, please refrain from disruptive demonstrations in the case. Comments from the audience will not be part of the record.

When you are called to testify, please come forward to the table. Please begin your testimony by giving you name, spelling your last name, and give your full mailing address including zip code. If you represent someone else, please indicate that. If you have any exhibits you want the Council to consider, such as a copy of your testimony, photographs, petitions, or other documents or physical evidence, at the close of your comments, you must hand in all the exhibits to the Recorder, who will make them part of the record. The staff will keep the exhibits until appeal opportunities expire, and then you can you can ask them to return your exhibits.

Testimony, evidence, and arguments must be directed at the criteria identified in the staff report. Those are Community Development Code Chapters 18.30 (City Attorney clarified after his remarks this should be 18.320) and 18.390, Comprehensive Plan Policies 2 and 10; Metro Code Chapter 3.09, and ORS Chapter 222.

Tonight the Council is conducting a hearing on four applications as a combined proceeding. This will permit anyone who wishes to address more than one item from having to testify multiple times. Please identify which annexation proposal proceeding you are testifying about. The Council will deliberate on each separately after the close of the proceeding.

c. Declarations or Challenges

City Attorney Ramis asked if any members of the Council wish to report any ex parte contact or information gained outside the hearing, including any site visits? None reported.

City Attorney Ramis asked if all members familiarized themselves with the application? All members indicated they were familiar with the application.

City Attorney Ramis asked if there were any challenges from the audience pertaining to the Council's jurisdiction to hear this matter or

is there a challenge on the participation of any member of the Council? There were no challenges.

d. Staff Report

Associate Planner Tracy recapped his statements for Mountain View Estates and Arlington Heights 3, which he began prior to the public hearing being opened.

For Wilson Ridge, the current owners are both registered voters and have signed the annexation petition. This property is pending subdivision approval for 14 lots.

For the Summit Ridge and Alberta School site: When the Alberta Rider school was approved, a condition of that development was to annex prior to allowing occupancy of school buildings. The School District has signed the consent forms as property owners to allow the annexation. Ms. Rider resides in a life estate tenancy in an area on the site and is the sole registered voter in the original annexation territory. Since Mrs. Rider has not consented to the annexation and has not signed a petition for the annexation, the City is unable to annex the life estate area without holding an election of voters in that territory. As a result, the boundaries have been revised to reflect the exclusion of this area from the annexation request. He referred to where this was located on a map on display in his PowerPoint presentation.

Summit Ridge was approved when it did not abut the City limits, so annexation was not required. However, when Arbor Summit to the north of Summit Ridge was annexed in 2004, Bella Vista, which lies to the south of Summit Ridge also petitioned for annexation, and through a double majority method, a portion of Summit Ridge was annexed. Around the same time, a subdivision plat for Summit Ridge was recorded, which resulted in some of the newly formed lots being partly in city limits and partly out. This annexation territory currently consists of six owners, four of whom have consented to the annexation. Staff reviewed voter registration records this morning and found that, with the exception of Ms. Rider, there are no other registered voters residing within this annexation area. Associate Planner Tracy reviewed how the lots were positioned both in and outside the city limits as a result of an earlier annexation approval.

Based on additional input from legal staff, supplemental findings were prepared consistent with ORS Chapter 222. Also staff recommends that additional language be added to the proposed ordinances to adopt the supplemental findings, along with the findings in the staff

reports. These additional findings have been distributed to Council members and are also available to the public at the rear of the room.

For the Alberta Rider/Summit Ridge annexation, a copy of the proposed revised boundaries excluding Ms. Rider's life estate tenancy have also been distributed to the City Council and made available for the public.

e. Public Testimony

Mayor advised of receipt of written testimony from Les and Ellen Godowski, which will be entered into the record.

Mayor Dirksen noted that sign-in sheets have been provided for each annexation proposal.

Mayor Dirksen clarified that testimony will be taken for each annexation area; however, it is appropriate that if someone wants to comment on other applications, then the City Council should hear the testimony instead of making people come back and forth.

1. Mountain Estates Subdivision Annexation

Applicant – Not present.

Proponents – None

Opponents

City Recorder's Note: All opponents, on the testimony sign-in sheet for this annexation proposal, indicated their testimony applies to all annexations for Council Agenda Item 7 and their testimony is hereby incorporated by reference.

- Charles Radley, 15729 SW Colyer Way, Bull Mountain, OR 97224 testified that his comments were general comments for all of the annexations. Mr. Radley's testimony included the following:

  - He would like to learn more after the hearing about the process used for obtaining consent from the various landowners. He hoped this was completely voluntary.
  - He said he was curious about the practice of issuing permits with a condition for annexing to the City. How appropriate is this?

- He referred to the Dolan vs. City of Tigard case language pertaining to conditions on permits and an essential nexus; that is, a logical connection between the governmental interest to be served and the conditions to be imposed on the landowner. He said he finds it difficult to understand the relevance about why a landowner needs to annex if all they need is a building or occupancy permit. He said he would like to learn more about this.
- He referred to Rhode Island information. (A copy of this information is on file with the City Recorder.)
- He asked if there was any pressure exerted on the property owners to annex.
- He requested the record be kept open for seven days for additional testimony.

➢ Mayor Dirksen noted, for clarification on process, that the City Council would receive testimony and then the City Attorney, or whoever is appropriate, will respond to questions.

- Julie Russell, 12662 SW Terra View Drive, Bull Mountain, OR 97224, presented the following as testimony:

  - She asked why this hearing is being conducted differently than previous annexation hearings and how this would affect the LUBA appeal process. Does it make it more expensive or difficult to file? She said she also requested that the hearing be continued for at least seven days based on the revised map and the additional findings presented this evening.
  - She noted her agreement with Mr. Radley with regard to conditional use permits.
  - She referred to the Alberta Rider conditional use permit. She said she found it upsetting that if the school does not agree to annex, the City of Tigard will not do the final inspection and the school will delayed. She said the City of Tigard has caused delays and cost the taxpayers of that District at least $1.2 million.
  - She said she would have hoped that the City Council would have considered the defeat of the annexation vote in November 2004 for Bull Mountain. This is in direct opposition.
  - She said Mark Padgett, President of the Planning Commission has openly stated in a Planning Commission meeting that his strategy is to surround Arlington Heights and annex them without vote. She

said she finds it frustrating that a City would have that policy and that a Planning Commissioner would have made that comment during a meeting.

- She noted in the last Oregon legislative session, several bills were passed to clarify annexation law. House Bill 2484, which guaranteed the dual majority vote and Senate Bill 887, which prevents island annexations and some companies from being annexed to Beaverton. She said she would hope that Tigard would follow the intent of the law and the vote and will of the people.
- She said she had some concerns with the map. She noticed that the map she received appears to be incorrect because it "talks about" Alberta Rider and part of Bull Mountain Road being annexed. She noted a line in the middle of Beef Bend Road; she was under the impression that Beef Bend Road and Bull Mountain Road were under the jurisdiction of Washington County. She asked if the map was in error or if this was a change. There was no notification of a change in road jurisdiction.
- She referred to Tigard's findings on Comprehensive Plan Policy 2.1.1 stating that every property owner affected by this annexation be notified. She said every owner in Arlington Heights will be affected by the annexation, because they will be completely surrounded if all annexations take place, and they will be in an island. Not every property owner was notified.
- She said she opposed the annexations, not to delay the building permits being issued, but because of the annexation process itself She said the school and builders should not be held hostage to consent to annexation.
- She referred to findings on policy 10.2 and that the Tigard staff report admits that none of the annexations eliminate pockets or existing islands, but they do create irregular boundaries and create islands. She said she believed that in the past, Council has said they would not annex to create islands and this is in direct opposition.
- She said she disputes the Community Development Code, Section 18.320.020 as this area has been identified to be park deficient by Washington County and the Bull Mountain Community Plan and the City of Tigard. There are no solutions associated with these

annexations to remedy to that situation. By allowing additional homes, it creates more deficiencies.

- She said Bull Mountain Road and Beef Bend Road are the only access points to Highway 99. Highway 99 is already at capacity at every intersection through Tigard. Additional building permits will only overload.
- She noted the Police did not make any comments. She wondered if the Sheriff's Department was notified of these annexations and what their comments would be.
- She referred to the change of zoning and disputed the information. The Bull Mountain Community Plan identifies R-6, six units per acre, not 7.
- She questioned why Summit Ridge was allowed to develop at R-7 before the annexation process. According to Tigard's Code, zoning is not supposed to change until the annexation takes place.
- She asked why Alberta Rider and Summit Ridge were being annexed together since Alberta Rider is owned by public entity and Summit Ridge is owned by a developer.
- She asked that the City Council consider all of these issues and to vote to proceed with the annexations appears to be bad public policy to continue annexing against property owners' wishes. This is absolutely what the City is doing in this process by requiring builders to annex and not allowing property owners to vote on it.
- She asked how Arlington Heights 3 can annex into their Homeowners' Association and not have a double majority vote of the property owners who already live in the subdivision?

× Scott Miller, President Mountain Gate Owners Association, 15415 SW Ashley Drive, Bull Mountain OR 97224, presented testimony which he also submitted in written format. A copy of the written testimony is on file in the City Recorder's office. He noted he would be adding to his written comments after going through his prepared statement:

- He advised he agreed with the prior two speakers and would like to incorporate their remarks into his as part of the record.
- He said he talked to Tigard Planning Commissioner Gretchen Buehner prior to the meeting. He asked her about conditional use permits and whether the City of Tigard was telling landowners that they could not

receive building permits or open the school, if annexation did not go through. He said she unequivocally told him, that this was false. He said this was in contradiction to what had been presented tonight during the staff report. He said he was concerned if there was misinformation.

- He said he had a significant problem with conditional use permits requiring annexation before building occurs or before the school is opened. He questioned whether the City was in violation of the law.
- He referred to the findings which make reference to ORS 222.125 and the need to obtain consent of the owners. How can they give consent if they are told they do not have permission to build or open the school unless their consent is given? He said that consent was never given and any proceedings to create annexation would be invalid. He said consent must be given freely.
- He said he was before the City Council tonight primarily because he represents 200 homeowners who are really concerned. They don't want to be part of the City of Tigard. They are concerned about where their money goes and getting value for their money.
- Before the City of Tigard goes forward with a plan to annex people who do not want to be annexed, he asked for this to be reevaluated. Does it make sense to everyone, or does it just make sense to the coffers of the City of Tigard?
- He said Ms. Buehner told him that land was being proposed to be purchased on Bull Mountain. He would like to know if the City of Tigard is buying land outside the City of Tigard with the intent to be able to say to the residents of Bull Mountain, "Here's your park." Or, with the intent to be able to use that as a lever for additional annexation.
- He asked the Mayor if the City of Tigard has a plan to continue annexation on Bull Mountain?

Mayor Dirksen advised response and rebuttal remarks would be made after testimony is given.

* Lisa Hamilton-Treick, 13565 SW Beef Bend Road, Unincorporated Bull Mountain, advised she is one of the founders of the Friends of Bull Mountain. She said she is a citizen of Washington County and advised they were her elected officials. Her comments included the following:

- She said many things have changed over the past two years. The City does not seem to recognize or respond to the changes.
- She said 89 percent of the residents of unincorporated Bull Mountain voted against annexation to the City of Tigard.
- More than 92 percent of the people on the south slope were opposed to annexation.
- The 2005 State Legislature passed several bills. HB 2484 secured a dual majority vote in all future ORS 195 annexations throughout the state. Friends of Bull Mountain participated actively and was pleased to restore fairness in this process for the State of Oregon. HB 2722 removed the veto power of cities within a three-mile distance of territories and now allows unincorporated communities to have a say about who they wish to have govern them – not to avoid paying taxes or providing services. It allows them to explore incorporation as a city. SB 887 recognizes the urgent need for annexation reform – to stop the very thing the City of Tigard continues to do. There is going to be a moratorium on forced annexation in certain areas prompted by Beaverton's aggressive annexation of roads to intentionally island areas in a territory and eliminate all rights of residents in those areas to have a say in their future governance. Actions by the City of Beaverton got a lot of attention by elected officials and laws are changing; task forces are being formed. It is not "business as usual."
- She referred to Measure 37. It is clear that property owners want a say on who governs their community and how their property is to be used.
- 100 concerned residents attended a CPO meeting in June where Friends of Bull Mountain and others spoke about a desire to explore all options for future governance. That is not to say the people on Bull Mountain do not want to pay their fair share. People in unincorporated areas that are rapidly urbanizing often want to be able to have a say in who will govern their community, how much their taxes will be increased, and where that money will be spent.
- She noted the vocal, strong opposition to annexation to Tigard at this CPO meeting. She noted Councilor Wilson attended this meeting and thought Community Development Director Hendryx was also there.

- She encouraged the City to halt the practice of aggressively annexing, by piecemeal, Bull Mountain, by creating irregular boundaries that are difficult to service and by withholding permits in exchange for annexation.
- She encouraged the City of Tigard to be watchful of the Task Force that will be forming out of the legislative session. She guaranteed that the residents of Bull Mountain will do everything in their power to influence fairness in annexation reform.
- She said that what the City does here affects cities and territories throughout the state.
- HB 2484 was passed because of the overwhelming involvement of the people who are not going to tolerate the kind of aggressive annexations that they have experienced.
- She noted the new legislative session will begin again in a year and a half and she guaranteed that the decisions made will influence how the Friends of Bull Mountain testify in Salem for fairness in all annexation decisions throughout the state.
- She said it was time for a change in the City's policy and she hoped it was an opportunity for the City to take a different look in the way it is approaching enlarging.

× Ken Henschel, 14530 SW 144th Avenue, Unincorporated Bull Mountain, OR 97224 testified that he is the Chair of CPO 4B, but tonight he was speaking as a citizen. His comments included:

- He said he would like to incorporate by reference the comments of the previous speakers in opposition.
- He noted at a recent CPO meeting, he apparently incorrectly spoke when he called Tigard the planning authority for unincorporated Bull Mountain. Several Tigard employees advised him that Tigard is the contractor implementing the County's plan. If that is the case, he said he is confused. He said he reviewed the intergovernmental agreement, the urban services agreement, the urban planning area agreement and looked at local, state, and federal codes/ordinances. He has not found any place that give a contractor the authority to force governance on an area as a precondition to approving building or occupancy permits.
- He said he knew the property owners had requested annexation; however, in talking to several of them, it is

his understanding that they are only requesting that because they had no choice. If they do not annex, they will not get their permits. He said he thought the process was flawed.

- He said the annexation represents an unconstitutional taking as these annexations are coerced.
- The overwhelming majority of Bull Mountain residents opposed annexation in the fall election and he remains disappointed that Tigard continues its annexation assaults on Bull Mountain and continues to fail to respect the wishes of the area residents.
- As the previous speakers said, there is no legitimate reason that Tigard could not approve permits without requiring annexation. He was saddened that the City of Tigard is not rethinking its strategy to instead build bridges with the community.

2. Arlington Heights 3 Subdivision Annexation

Applicant

× Tom Weber, 12755 SW 69th Avenue, Suite 100, Portland, OR 97223 testified that he is the owner and developer of Arlington Heights 3. His comments included:

- He supported the annexation.
- He said as he listened to the previous testimony and whether required to or not, he would choose to annex to the City of Tigard.
- He said he wanted the residents of this subdivision to receive the benefits of being citizens of the City of Tigard.
- He said "we" own the property to be annexed and it is their desire to be annexed without delay.
- He urged the City Council to approve the annexation as any more delay on the project will cause him to miss this season.
- He said that if the residents of Bull Mountain, and he said he was speaking for his project, are to receive the benefits of the City of Tigard, they should be residents of the City of Tigard and be responsible for the bill for the City of Tigard.
- He said he had other projects on Bull Mountain and elsewhere in the City and, if they were qualified to be annexed, he would do that too.

- He said he knows most of the other developers and it would be interesting to hear from the other developers about how they feel about this. He said he does not feel as if he is being coerced.

Opponents

City Recorder's Note: All opponents, on the testimony sign-in sheet for the Mountain View Estates annexation proposal, indicated their testimony applies to all annexations for Council Agenda Item 7 and their testimony is hereby incorporated by reference.

Mayor Dirksen noted Lisa Hamilton Treick was signed in to speak on this item. She said she would not comment on this annexation but would like to comment on one of the other annexation proposals.

3. Wilson Ridge Subdivision Annexation

Applicant

- John Marquart, 9600 SW Oak Street, #230, Portland, Oregon 97223 and Al Jeck, 9600 SW Oak Street, Portland, Oregon 97223 testified representing Alpha Community Development. Mr. Marquart's advised they were the developers of Wilson Ridge. Mr. Marquart advised:

  - He echoed Mr. Weber's comments that they believe it is a choice that they willingly make to be annexed.
  - They acquired the amicable consent of both the registered voters on the site where they intend to construct a 14-lot subdivision.
  - This subdivision recently received approval, with conditions. One of the conditions is for the annexation to the City of Tigard, which they were more than happy to do.
  - He said he contends that their annexation is not an island annexation or an irregular annexation. It is simply a southerly extension of the Three Mountain Estates subdivision which is already in the city limits, which is why he believes the Tigard Police Department signed off on this annexation.
  - He urged the City Council to approve the annexation.

Mr. Jeck added that he urged the City Council to approve the annexation and advised they would be available to address any questions.

Councilor Woodruff referred to testimony where people have stated they believe there is coercion in that the developer cannot go forward unless they agree to annex and that this is unfair. Councilor Woodruff asked if the annexation was something Mr. Jeck would want whether or not it was required for the development process. Mr. Jeck said, "Yes, it is."

Opponents

City Recorder's Note: All opponents, on the testimony sign-in sheet for the Mountain View Estates annexation proposal, indicated their testimony applies to all annexations for Council Agenda Item 7 and their testimony is hereby incorporated by reference.

- Lisa Hamilton-Treick asked to receive a current copy of the map of the unincorporated area of Bull Mountain, including all of Bull Mountain and Beef Bend Roads to demonstrate where the City's' jurisdiction begins and ends. The maps they have are "in chunks" and she said she has never seen an inclusive map that shows what the City is taking in with regard to Bull Mountain and Beef Bend Road. She said it would help them understand contiguous connections. Associate Planner Tracy indicated that a map could be furnished. The maps received in the notice were general vicinity maps and detail is not shown to the level of lots. The annexation lines are shown on tax maps and those can be provided.

  Ms. Hamilton-Treick said it would be beneficial to the people living on Bull Mountain and in the unincorporated area to see a large scale map that shows the big picture of both roads. Associate Planner Tracy said there is no such map to that level of detail. He referred to the legal description boundary limits of the annexation. He said the City map shows the generalized line. For precise boundaries on where the road line is, "you would have to go the tax maps." There is no large scale map that shows that. Community Development Director Hendryx said staff would look into this and provide the best information they could.

  Ms. Hamilton-Treick noted that the line shown down the middle of Beef Bend Road "is news to all of us." Associate

Planner Tracy said the line down Beef Bend Road is not the annexation line. Ms. Hamilton-Treick said then she is looking for an explanation.

Ms. Hamilton-Treick said the Wilson Ridge property only has two homes on the two acres. She said those homes are being demolished and 14 homes will be built right on Bull Mountain Road. She said this development is not compatible with the existing neighborhood. She said when she looked at the annexation line, she sees an area that is quite a distance from the other properties and also there is a very long easement – a long finger reaching down the back of these properties. She said she has been told that there has been a request to specifically remove this parcel from annexation right now as a gesture of good will and as a gesture of hope for future discussions and negotiations. She said she would like to reinforce that request that this particular parcel be removed from this process.

Interim City Manager Prosser asked who made the request?

Ms. Hamilton-Treick said Washington County.

Councilor Woodruff asked, "Washington County that it be removed from annexation..." Ms. Hamilton-Treick said you might want to discuss that with the Mayor.

Interim City Manager Prosser said he received a call last week from Washington County Administrator Charlie Cameron who indicated that County Chair Brian had proposed a deal to the Friends of Bull Mountain. Chair Brian was concerned that this would go against that deal. This is something the City is aware of, and the City has indicated they would be willing to talk about this, but until it became public knowledge and discussed publicly, the City would not sign off on any such deal. There has been no public discussion.

Ms. Hamilton-Treick said she wanted to correct a statement and said that Washington County did not cut any deal with the Friends of Bull Mountain. She said they did not speak for all the people of Bull Mountain, but they did initiate a discussion in an effort to resolve some of these issues once and for all with respect to "what our neighbors have asked for."

4. Alberta Rider School/Summit Ridge Annexation

City Recorder's Note: All opponents, on the testimony sign-in sheet for the Mountain View Estates annexation proposal, indicated their testimony applies to all annexations for Council Agenda Item 7 and their testimony is hereby incorporated by reference.

No additional testimony was given. Mr. Radley submitted some written testimony quoting the legal case he referenced earlier.

Rebuttal

Associate Planner Tracy acknowledge that annexation is an emotional issue for the residents of Bull Mountain. To refine this hearing and concentrate on the applications he advised these are four requests that were initiated by the property owners. He referred to the consents obtained by voters. These applications do not represent an aggressive attack on Bull Mountain.

Associate Planner Tracy noted there were comments concerning the approved conditions of development approval and the appropriateness of requiring annexation with certain development applications. For Council's consideration, that comment is not relevant or ripe for these particular applications. The applicant or appellant could have raised those issues during the appeal, when the developments were approved.

Associate Planner Tracy said there was another comment regarding the change in the process for the annexation hearings. This was somewhat of an experiment to facilitate public testimony to consolidate these hearings into one evening, so you would not have to come here multiple times and hear multiple presentations on the same issue. This also gives a broader perspective of all the annexations that are occurring in and around the same area.

Associate Planner Tracy noted the School District's application was prepared by the City to facilitate their ability to move into this school by October. He said the City understands the type of constraints the School District is up against and the City is eager for them to open the school. The School District did not initiate the annexation application, but did sign the consent. For that particular application and for a portion of Summit Ridge, the consent forms were signed by the property owners and the City has initiated the application to facilitate their ability to get their plats through and move into the school.

Associate Planner Tracy noted there was a question about the jurisdiction of Bull Mountain Road and that will not change as a result of the annexation. This would be handled through a different process between the County and the City.

Associate Planner Tracy referred to the testimony regarding change in zoning. The zoning in the Bull Mountain area is R-7 and this change occurred in 1997, when the City began doing planning services for the urban services area.

Associate Planner Tracy noted the Mayor was asked whether the City plans to continue to do annexation on Bull Mountain. The City has had a policy in place since 1997/98 to annex property that develops when it is adjacent to city limits. Until that policy changes, the City plans to continue annexation of those properties that are developing.

Associate Planner Tracy referred to Ms. Hamilton-Treick's testimony concerning Beaverton's actions to annex roads to create islands and how that created a stir with the State Senate. This is not what is being proposed here. The City is not extending cherry stems. There is a parcel on the Wilson Ridge Subdivision that looks like a cherry stem, but it is not a road nor is it right of way – it is part of the "parcel proper." The applicant has asked for the entire parcel to be annexed.

Associate Planner Tracy said the applicant for Wilson Ridge Subdivision might want to speak to the proposal for removal of one parcel as this was not represented in their application.

Associate Planner Tracy asked for the City Attorney to speak about the pre-condition of annexation on development.

City Attorney Ramis said there were three issues he noted that were legal in nature:

1. Whether the process being used affects in some way the appeal procedure to LUBA? He said, "No, this is the same as any other hearing of this type. We simply, hopefully tried to make it more convenient for people to testify by combining in one hearing process the opportunity to testify. The Council will in the end consider the record, consider the criteria, make a decision, adopt findings, and reduce those into writing in the same way that you do for any case and do that individually for each of the applications. So, those will be four separate actions, which can be appealed separately, just as if they were

held on different nights if we conducted the hearing process that way."

2. Whether the City had authority to conduct this proceeding without engaging in a double majority vote for the people inside and outside of the City? The statutory language says the legislative body of the City need not call or hold an election in the City in any contiguous territory proposed to be annexed or hold other hearings that are required by statute when all of the owners of the land in the territory, and not less than 50 percent of the electors residing in the territory, consent in writing to the annexation. The question is how many people have consented who are owners and how many have consented who are voters? If these tests have been met, then there is no election required.

3. A question on the validity of the consents signed. The conditions that were imposed were imposed in other land use proceedings that were not appealed. Therefore, the imposition of those conditions became final and they are enforceable. We are all bound by them, because there has been no appeal. There is no opportunity after 21 days to appeal them in separate proceedings. They are legally binding and required.

   City Attorney Ramis noted another question is: What is the meaning or the intent to the intergovernmental agreements that exist with Washington County and is there authority in that process for conditioning projects? Those agreements are premised on the policy that these lands will be annexed by the City. Therefore, the action the City has taken with respect to the conditions are fully in accord with those agreements. The policy of those agreements is that annexation take place and so we have implemented that policy through that condition. In the City's view, the actions taken are not inconsistent with those agreements and are authorized by them.

   City Attorney Ramis said there is statutory authority for consent agreements. When a City extends services, it can ask for annexation in return and that process is specifically authorized by statute.

Community Development Director Hendryx noted there was an issue about leaving the record open. In reference to voters on Bull Mountain, he noted the City Council is certainly aware that the election for Bull Mountain annexation was resoundingly defeated in

unincorporated Washington County. Tigard voters were in support of this continued action by the City; in excess of 60 percent of the Tigard voters were in support. Community Development Director Hendryx referred to boundary irregularities and said the staff report addresses this. To look at the whole picture in the unincorporated area the City is continuing to annex areas and there will always be slight irregularities and over a period of time those will be consolidated and straightened out.

Community Development Director Hendryx said there was a comment about notice not being given. The City followed the notice requirements; the site was posted. In response to a comment from Community Development Director Hendryx about notice within 500 feet, Associate Planner Tracy advised of a courtesy notice for property owners, but it is not a requirement of the Tigard code. Community Development Director Hendryx continued by saying that notice has been given and people are here tonight.

With regard to park deficiency, Community Development Director Hendryx said the Council is well aware of the park deficiency on Bull Mountain. The Park and Recreation Board (PRAB) has been charged with looking at addressing park needs for Tigard and in unincorporated areas, including Bull Mountain. The PRAB will report their findings to the City Council.

Community Development Director Hendryx said there was an issue with regard to zoning and 99W. Community Development Director Hendryx said that the City Council, next week, would be having a briefing on County issue papers that the County has prepared. There is a potential moratorium on public facilities' strategy for unincorporated Bull Mountain. The issue papers address 99W, long-range planning, and long-range park planning for the area. Mayor Dirksen said he encouraged interested parties who have not heard the contents of Washington County issue papers to come to this meeting to hear the presentation by Washington County.

City Attorney Ramis commented on the process. He noted there has been a request for a continuance to leave the record open for additional comments. By statute, the City is following the land use procedures, so given that request, the City is obliged to honor it. He said his recommendation is to allow seven days for the submission of written comments. After that time, the City Council is to review the comments as well as the record that has been created. At that time, the City Council will deliberate and give direction to staff on the preparation of the ordinances.

The next Council business meeting is August 23, 2005. Interim City Manager Prosser advised that the record will be left open for seven days, until the close of business, Tuesday, August 16, 2005. The staff will bring this back to Council on Tuesday, August 23.

The process would be for the Mayor to close the public hearing. On August 23, 2005, Interim City Manager Prosser advised no additional testimony would be received.

f. Motion by Councilor Sherwood that the Council keep the record open for seven days for written comments and close the hearing. Motion was seconded by Councilor Woodruff.

Mayor Dirksen suggested an amendment to the motion, that the decision will be considered on August 23, 2005.

City Recorder Wheatley read the motion as amended for clarification:

> "Motion to leave the record open for seven days to receive written comments, close the public hearing; and, the decision will be considered on August 23."

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

Community Development Director Hendryx noted staff will send out all the comments on next Friday, August 19, 2005 in the Council's newsletter packet so the City Council will receive the information before the August 23, meeting.

To clarify a question from Mayor Dirksen, City Attorney Ramis advised the City Council delay its deliberation until it has seen all of the evidence. Mayor Dirksen said this will give the City an opportunity to formalize all the comments and to review.

8. COUNCIL LIAISON REPORTS: None.

9. NON AGENDA ITEMS: None.

10. EXECUTIVE SESSION: Not held.

11. ADJOURNMENT

Motion by Councilor Wilson, seconded by Councilor Sherwood, to adjourn the meeting at 9:51 p.m.

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff	Yes

_____
Catherine Wheatley, City Recorder

Attest:

_____
Mayor, City of Tigard

Date:_____

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Agenda Item No.	4.1
For Agenda of	9-13-05

COUNCIL MINUTES
TIGARD CITY COUNCIL MEETING
AUGUST 16, 2005

Mayor Dirksen called the meeting to order at 6:30 p.m.

Council Present: Mayor Dirksen; Councilors Sherwood, Wilson, and Woodruff.

- EXECUTIVE SESSION: The Tigard City Council went into Executive Session at 6:30 p.m. to consider employment of a public officer, employee, staff member or individual agent under ORS 192.660(2)(a).

Executive Session concluded at 6:45 p.m.

1. WORKSHOP MEETING
   - 1.1 Mayor Dirksen called the City Council & Local Contract Review Board meeting to order at 6:50 p.m.
   - 1.2 Council Present: Mayor Dirksen; Councilors Sherwood, Wilson, and Woodruff.
   - 1.3 Pledge of Allegiance
   - 1.4 Council Communications & Liaison Reports

     Mayor Dirksen recently attended the Oregon Mayors Association (OMA) conference in Jacksonville, Oregon. He reviewed activities and some of the sessions he attended. He was particularly impressed with a communications session, *Taking the War out of Words*, which offered insights on how to keep dialogue open in difficult circumstances. This session also included information about working with the media: television, radio and print. He suggested the City Council might want to consider such training.

     Mayor Dirksen reviewed topics discussed during the OMA business meeting, including:
     - ☒ telecommunication
     - ☒ prevailing wage
     - ☒ Oregon land use task force (with OMA recommending task force membership provide for five locally elected officials)
     - ☒ urging that the Oregon Airbase remain open

   - 1.5 Call to Council and Staff for Non-Agenda Items: None

2. UPDATE – WASHINGTON COUNTY 2010 STRATEGIC PLAN

Washington County Communications Officer Philip Bransford updated the City Council on the *County 2010 Strategic Plan*. Background information and a Plan discussion draft is on file in the City Recorder's office.

Discussion topics included the following:

- ☒ A review of the Strategic Plan timeline.
- ☒ History of the Plan, which updates the *County 2000* adopted in 1986 to consider how to provide services to an increasing population base during an unstable economy.
- ☒ *County 2000* was revised in 1993.
- ☒ A brief review of the Vision West process to address human services and the subsequent creation of the Vision Action Network (VAN).
- ☒ Updated *Strategic Plan* is designed to be user friendly. The *Strategic Plan* is to be used as a guide to provide broad direction and description of County services and priorities. Then, enabling plans will be developed to define the challenges, identify solutions, priorities and specific funding strategies.
- ☒ The County is now identifying the topics to be addressed in an enabling plan.
- ☒ Urban Services is one subject that will be addressed in an enabling plan.
- ☒ The *Strategic Plan* identifies the following as underlying fundamentals:
    - Services that are only provided by the County
    - Services provided through partnering with other agencies
    - Areas where the County is in a supporting role
- ☒ A distinction is drawn between what are municipal services and what are county-wide services.
- ☒ Washington County is unique in the State of Oregon in that there is a high percentage of urban unincorporated residents.
- ☒ County's governance structure was referenced.
- ☒ In response to a question from Mayor Dirksen, Mr. Bransford said the new *Strategic Plan* does not differ in substance from the *County 2000 Plan*. The main change is in format.
- ☒ Councilor Wilson said several months ago a question was asked regarding whether County residents in cities are subsidizing services to county residents in unincorporated areas. Mr. Bransford said this question was researched in the late '80's and it was confirmed that there was some subsidy provided by residents of cities to residents in unincorporated areas. He said measures were taken to address this situation, including establishing service districts. The County Auditor is reviewing this issue and a report will be made available later this year.
- ☒ Mayor Dirksen noted he understood the policy for service districts was that these districts were to be temporary. He said he didn't see this statement in the *Strategic Plan*. Mr. Bransford said doors are not being

closed on any options and more in-depth study will be done regarding urban services in the enabling plan.

- ☒ Mayor Dirksen noted the demarcation of county and city services is less than a sharp line. He would like to see the Plan be more forthcoming on issues that need to be addressed, including funding reliability for public safety.
- ☒ Councilor Woodruff noted he worked for the County when the *County 2000* was created. He said he thinks the County sends mixed messages regarding urban services and this creates an atmosphere of confusion. He said he was hopeful this will become clearer. The County and City should be working closely and the overall County goals should be known.
- ☒ Councilor Wilson referred to the cost of providing public safety for all County residents. He said crime is mostly an urban problem (shopping centers, major highways). To determine what is a fair share to pay for this service by all residents in a county, he suggested public safety costs be calculated using the amount spent by cities and the county, then divide this total amount by the County population figure. This would show how much it costs to provide this service to everyone.
- ☒ Councilor Woodruff acknowledged the pressure on the County Board and noted his appreciation for the number of County-level services that are being done well. He urged the County to decide on its direction regarding the services it is to provide.
- ☒ Councilor Sherwood commented she did not think the VAN has lived up to its expectations to coordinate common human services goals. Mr. Bransford noted the VAN Executive Director is relatively new and he it was hoped more progress would occur.
- ☒ Mayor Dirksen suggested other service areas could be addressed more effectively if the County's efforts weren't diluted with providing municipal services.
- ☒ In response to questions that did not appear to be addressed, Mr. Bransford advised effort would be made in the enabling strategies to pay attention to areas that need more detail to communicate with partners.
- ☒ Mayor Dirksen said some questions might not have answers, but an effort should be made to address the issues. He said the City of Tigard would be glad to assist the County.
- ☒ Mr. Bransford said the County Board still needs to determine the subjects to be addressed in the enabling plans. Some plans are well underway. More information will be developed on the urban services strategy. The overarching strategy will be completed by the end of 2005.
- ☒ Washington County Issue Papers were to have been discussed (Agenda Item No. 3) this evening; however, the County determined it was premature. Councilor Woodruff said that if the County discusses the Issue Papers on September 27, he hopes the City of Tigard will have an opportunity to review and provide comments beforehand. Mayor Dirksen

noted he had received assurances the City would be given an opportunity to give input.

This item pulled from the agenda; it will be rescheduled.

~~3. WASHINGTON COUNTY PRESENTATION OF ISSUE PAPERS ON BULL MOUNTAIN~~

- ~~Staff Report: Community Development Department~~
- ~~Presentation: Senior Washington County Planner Joanne Rice~~

4. DISCUSS – CONSIDERATION OF AMENDING THE TIGARD MUNICIPAL CODE (TMC) SECTION 3.24.090 TO CLARIFY WHEN SYSTEM DEVELOPMENT CHARGES ARE ASSESSED

Community Development Director Hendryx introduced this agenda item. Building Official Lampella presented the issues, which are outlined in the staff report on file in the City Recorder's office. Staff members are requesting Council direction on whether they should proceed with an amendment to the Tigard Municipal Code (TMC) to require City System Development Charges (SDC) to be assessed on the permit application date rather than the issuance date.

Building Official Lampella reviewed a chart showing fees charged by other cities, including how they are assessed. Most cities assess their fees based on application submittal date.

After discussion, City Council direction was that staff proceed with steps to amend the TMC to require that City SDC fees be assessed on the application submittal date. Community Development Director Hendryx advised staff would return to the City Council with an ordinance for its consideration.

5. UPDATE – NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS) AND OFFICE OF CONSOLIDATED EMERGENCY MANAGEMENT (OCEM)

City of Tigard Emergency Management Coordinator Lueck and Tualatin Valley Fire & Rescue Assistant Chief Hale reviewed the background of NIMS and OCEM. A resolution to formally adopt the NIMS operating premise will be presented to the City Council on September 13, 2005.

The following information was reviewed and distributed to the City Council:

- ☒ PowerPoint slide presentation
- ☒ OCEM Strategic Plan
- ☒ NIMS documents, entitled "Handouts"

The Emergency Operating Center (EOC) for Tigard has been updated. Interim City Manager Prosser noted the EOC has staff involved from every City department.

Council discussion followed about how agencies coordinate and prioritize emergency services through mutual assistance. The magnitude of an event dictates whether local, state, or federal agencies take the lead.

Council meeting recessed: 8:23 p.m.
Council meeting reconvened: 8:28 p.m.

6. UPDATE – FANNO CREEK MASTER PLAN

Public Works Director Koellermeier presented the update to the City Council as outlined in the staff report.

The City applied for and received a state grant to construct an 1100 foot Fanno Creek Trail segment from Hall Boulevard (starting at City Hall) to Wall Street as Wall Street extends to the east. The project includes a 60-foot bridge that will cross Fanno Creek just north of the gazebo. Construction of the trail is being funding the State grant, Park SDC funds, and insurance money received after the "white house" fire. To comply with the State grant and remain eligible for state funding, the trail must be completed by December 30, 2005.

The City Council and Public Works Director Koellermeier discussed the bridge, which Public Works Director Koellermeier indicated would be engineered and put in place with in-house staff. Public Works Director Koellermeier reported he was not sure if pedestrians would be able to walk underneath the bridge. The bridge will be completed by December 30. The bridge will not impact stream flow.

There was discussion of the future trail connections including alternate options if ODOT does not allow a crossing over Hall Boulevard. Also discussed was how the trail might be constructed pending the outcome of the Wall Street project.

7. REVIEW -- INFORMATION ON THE 2005 LEAGUE OF OREGON CITIES (LOC) AWARDS PROGRAM

Interim City Manager Prosser reviewed the LOC awards program, Staff suggested applications be submitted on one or more City programs, which included the extensive programs for youth (Tigard Turns the Tide, Youth Advisory Council, Peer Court, DARE/GREAT Camp), the Downtown Improvement Plan Community Dialogues, and the Public Works Customer Satisfaction Survey.

After discussion, City Council consensus was for staff to apply for awards for the City of Tigard's youth programs and the Downtown Improvement Plan Community Dialogues.

8. COUNCIL LIAISON REPORTS

Councilor Wilson noted he would like to participate on the Construction Selection Committee.

9. NON AGENDA ITEMS: None

10. EXECUTIVE SESSION: Not held

11. ADJOURNMENT:

Motion by Councilor Woodruff, seconded by Councilor Sherwood, to adjourn the meeting at 8:49 p.m.

The motion was approved by a unanimous vote of Council present:

Mayor Dirksen:	Yes
Councilor Sherwood:	Yes
Councilor Wilson:	Yes
Councilor Woodruff:	Yes

_____
Catherine Wheatley, City Recorder

Attest:

_____
Mayor, City of Tigard

Date:_____

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MEMORANDUM

CITY OF TIGARD

Agenda Item No._____
For Agenda of Sept. 13, 2005

TO: Honorable Mayor and City Council

FROM: Greer Gaston, Deputy City Recorder

DATE: September 1, 2005

SUBJECT: Three-Month Council Calendar

Regularly scheduled Council meetings are marked with an asterisk (*).

September

11	Sunday	City's Birthday – 44th
11-18	Sun-Sun	Family Week Celebration
13*	Tuesday	Council Business Meeting – 6:30 pm, Town Hall
20*	Tuesday	Council Workshop Meeting – 6:30 pm, Town Hall
22	Thursday	Citizen Leadership Series – 9 Sessions, Thursday evenings
27*	Tuesday	Council Business Meeting – 6:30 pm, Town Hall
30	Friday	Council Strategic Planning Retreat – Noon, 10305 SW 87th Avenue, Tigard, Oregon

October

11*	Tuesday	Council Business Meeting – 6:30 pm, Town Hall
18*	Tuesday	Council Workshop Meeting – 6:30 pm, Town Hall
25*	Tuesday	Council Business Meeting – 6:30 pm, Town Hall

November

8*	Tuesday	Council Business Meeting – 6:30 pm, Town Hall
11	Friday	Veteran's Day – City Offices Closed
15*	Tuesday	Council Workshop Meeting – 6:30 pm, Town Hall
22*	Tuesday	Council Business Meeting – 6:30 pm, Town Hall
24-25	Thurs & Fri	Thanksgiving Holiday – City Offices Closed
29	Tuesday	5th Tuesday Council Meeting – 7-9 p.m., Tigard Water Auditorium

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Tigard City Council Tentative Agenda 2005

Meeting Date:	**September 20, 2005**	**Meeting Date:**	**September 27, 2005**	**Meeting Date:**	**September 30, 2005**
Meeting Type/Time:	Workshop/6:30 p.m.	Meeting Type/Time:	Business/6:30 p.m.	Meeting Type/Time:	Retreat/12:00 PM
Location:	City Hall	Location:	City Hall	Location:	10305 SW 87th Ave
Greeter:		Greeter:		Greeter:	
Materials Due @ 5:	September 6, 2005	Materials Due @ 5:	September 13, 2005	Materials Due @ 5:	September 16, 2005
Bid Opening Deadline:	September 5, 2005	Bid Opening Deadline:	September 12, 2005	Bid Opening Deadline:	September 15, 2005
Scan Deadline @ noon:	September 2, 2005	Scan Deadline @ noon:	September 9, 2005	Scan Deadline @ noon:	September 12, 2005
Req to Sched Due @5:	August 19, 2005	Req to Sched Due @5:	August 26, 2005	Req to Sched Due @5:	August 19, 2005
Televised:	No	Televised:	Yes	Televised:	No
Attorney Attends:	No	Attorney Attends:	No	Attorney Attends:	No
		Study Session			
1. Meeting with IWB - Dennis K. - 20 min 2. I-5/Hwy 99 Connector Information Briefing and Discussion - Gus - 20 min. 3. Application of Public Facility Standards in Development and Capital Improvement Program Projects - Gus - 20 min 4. Proposed 79th Avenue Local Improvement Dist. - Discussion of Options - Gus - 25 min. 5. Provide Input on Washington County Issue Papers - Jim - 30 min 6. Graphic Identity/Branding Design Concept Discussion - Liz - 60 min **CCDA** - Update - Urban Renewal Plan Status Jim/Barbara - 25 min.		Reserve 1/2 hour for a reception - Indonesian Delegation beginning at 5:30 or 6 p.m. Executive Session - Feedback on Possible Ppty. Foreclosure - Tom - 10 min Executive Session - Potential Litigation - Gus - 20 min Time Available: 45 min - 30 scheduled/15 left Consent Agenda LCRB - Design Services for Downtown Comp. Streetscape, Commercial ... - Vannie/Barbara Library Policies - Margaret - RTS Needed Management COLA- Sandy - RTS Needed - dependent upon 9/13 discussion Business Meeting Introduction of Indonesian Delegation - Margaret - 10 min. Proclaim Oct. - Disability Employment Awareness Month - Joanne - 2 min Proclaim Oct. - National Breast Cancer Awareness Month - Joanne - 2 min End of Legislative Session Report - Sen. Burdick, Rep. Galizio - Joanne - 30 min. Review and Adopt **Resolution** Accepting the Tigard Downtown Improvement Plan - Jim 60 min Annual Police Report - Bill D. - 30 min.		**COUNCIL RETREAT**	
Time Avail: 200 min. - Time Scheduled: 200 min. Time Left: -0- min.		Time Avail.: 135 min. - Time Scheduled: 134 min Time Left: 1 min.			

Tigard City Council Tentative Agenda 2005

Meeting Date:	**October 11, 2005**	**Meeting Date:**	**October 18, 2005**	**Meeting Date:**	**October 25, 2005**
Meeting Type/Time:	Business/6:30 p.m.	Meeting Type/Time:	Workshop/6:30 p.m.	Meeting Type/Time:	Business/6:30 p.m.
Location:	City Hall	Location:	City Hall	Location:	City Hall
Greeter:		Greeter:		Greeter:	
Materials Due @ 5:	September 27, 2005	Materials Due @ 5:	October 4, 2005	Materials Due @ 5:	October 11, 2005
Bid Opening Deadline:	September 26, 2005	Bid Opening Deadline:	October 3, 2005	Bid Opening Deadline:	October 10, 2005
Scan Deadline @ noon:	September 23, 2005	Scan Deadline @ noon:	September 30, 2005	Scan Deadline @ noon:	October 7, 2005
Req to Sched Due @5:	September 9, 2005	Req to Sched Due @5:	September 16, 2005	Req to Sched Due @5:	September 23, 2005
Televised:	Yes	Televised:	No	Televised:	Yes
Attorney Attends:	Yes	Attorney Attends:	No	Attorney Attends:	No
Study Session				Study Session	
Discussion of GIS Coordinator Position - Gary - RTS Needed Time Available: 45 min - 0 scheduled/0 left		1. Jt. Meeting with Senior Center Board - Loreen 30 min. (Loaves & Fishes will provide Council with dinner.) Jt. Meeting with Tree Board on Proposed Alterations to Chapter 18 and Amend Tree Board Resolution - Dennis - 30 min.		Report to Council - Ranked Responses from RFP - Legal Services Time Available: 45 min - 0 scheduled/0 left	
Consent Agenda		E-Mail Discussion - Tom (Nadine, Cathy) - 20 min Communication Update - Liz - RTS Needed		Consent Agenda	
				Present 3rd Quarter Goal Update - Joanne Budget Amendment for GIS Coordinator - Tom - RTS Needed	
Business Meeting				Business Meeting	
Proclamation - Make a Diff. Day - Joanne - 2 min PHQJ - Sunrise Annexation - ZCA 2005-0004 - Jim - 15 min. Hi Hat Measure 37 Claim - **QJPH** - **ORD** - Jim - 30 min CCDA - Draft Urban Renewal Plan - Jim - 60 min				Tigard Access Plan Progress Report - TriMet General Manager Fred Hansen - Jim - 25 min Request by Tri-Met for above to be first… Need request to Schedule: ODOT - Gus	
Time Avail.: 135 min. - Time Scheduled: 107 min Time Left: 28 min.		Time Avail: 200 min. - Time Scheduled: 80 min. Time Left: 120 min.		Time Avail.: 135 min. - Time Scheduled: 25+ min Time Left: <110 min	

Tigard City Council Tentative Agenda 2005

Meeting Date:	**November 8, 2005**	**Meeting Date:**	**November 15, 2005**	**Meeting Date:**	**November 22, 2005**
Meeting Type/Time:	Business/6:30 p.m.	Meeting Type/Time:	Workshop/6:30 p.m.	Meeting Type/Time:	Business/6:30 p.m.
Location:	City Hall	Location:	City Hall	Location:	City Hall
Greeter:		Greeter:		Greeter:	
Materials Due @ 5:	October 25, 2005	Materials Due @ 5:	November 1, 2005	Materials Due @ 5:	November 8, 2005
Bid Opening Deadline:	October 24, 2005	Bid Opening Deadline:	October 31, 2005	Bid Opening Deadline:	November 7, 2005
Scan Deadline @ noon:	October 21, 2005	Scan Deadline @ noon:	October 28, 2005	Scan Deadline @ noon:	November 4, 2005
Req to Sched Due @5:	October 7, 2005	Req to Sched Due @5:	October 14, 2005	Req to Sched Due @5:	October 21, 2005
Televised:	Yes	Televised:	No	Televised:	Yes
Attorney Attends:	Yes	Attorney Attends:	No	Attorney Attends:	No
Study Session				Study Session	
Consent Agenda				Consent Agenda	
Business Meeting				Business Meeting	
Need request to Schedule: Youth Advisory Council - Liz		Need request to Schedule: Tree Board - Dennis K. TriMet - Jim H.			
Time Avail: 200 min. - Time Scheduled: Time Left:		Time Avail.: 200 min. - Time Scheduled: Time Left:		Time Avail.: 135 min. - Time Scheduled: min Time Left: min.	

AGENDA ITEM # _____
FOR AGENDA OF September 13, 2005

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE A Resolution Approving Budget Amendment #1 to the FY 2005-06 Budget to Increase Appropriations in the Water, Water CIP, and Water SDC Funds for Funding of Certain Capital Water Projects.

PREPARED BY: Michelle Wareing DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Should City Council approve Budget Amendment #1 to the FY 2005-06 Budget to increase appropriations in the Water, Water SDC, and Water CIP funds for funding of certain water projects?

STAFF RECOMMENDATION

Staff recommends approval of Budget Amendment #1.

INFORMATION SUMMARY

When the FY 2005-06 Water Capital Improvement budget was created and adopted, it was anticipated that the purchase of the reservoir site on Bull Mountain near the Alberta Rider School would be completed in FY 2004-05. Also, it was projected that the expenditures for the Walnut Street and the Telemetry Upgrade Capital Improvement projects would be greater than what was actually incurred in FY 2004-05. Therefore, those unspent appropriations were not carried forward into FY 2005-06. Finally, a new project related to the acquisition of a long term water source has arisen as well as the FY 2005-06 budgets for the Aquifer Storage Recovery (ASR) #2 well construction and the purchase of another reservoir site on the north side of Bull Mountain are not adequate now that the estimates for the actual costs of the projects have been updated.

It is estimated that the purchase of the reservoir site near the Alberta Rider School could be as much as $1.2 million. There are no appropriations for the purchase of this reservoir site in the FY 2005-06 Budget as it was anticipated that the site would be purchased in FY 2004-05. However, the FY 2005-06 Budget does include $600,000 for construction of this reservoir. Also, the FY 2005-06 Budget contains appropriations for purchase of an additional reservoir site on Bull Mountain in the amount of $400,000. Due to rising property values, it has been determined that an additional $600,000 will be needed to purchase this other reservoir site.

The Walnut Street project, the Telemetry Upgrade project, and the ASR #2 Well construction have appropriations in the FY 2005-06 Budget, but they are not adequate to complete the projects. The Walnut Street project needs an additional $116,720, the Telemetry Upgrade project needs an additional $77,500, and the ASR #2 well construction project needs an additional $100,000. Finally, $50,000 is needed for the Lake Oswego Feasibility Study, which is the new project that is related to the acquisition of a long term water source. The total additional funding needed for these projects is $2,144,220.

As the contingencies in the Water, Water CIP and Water SDC funds are insufficient to cover the total additional funding needs, staff is recommending that certain projects that were budgeted for in FY 2005-06 be postponed until FY 2006-07. The appropriations for these postponed projects could then be used to fund the purchase of the two water reservoir sites listed above. The projects that are recommended to be postponed are as follows:

- **550' Zone Improvements: Reservoir #2 Construction - $450,000.** This project is for the construction of the reservoir near the Alberta Rider School. As the site has not been purchased, construction cannot occur. It is estimated that $150,000 of the $600,000 budget for construction will be needed in FY 2005-06 for design expenses. This leaves $450,000 available for property purchase expenditures.
- **550' Zone Improvements: 10 MG Transfer Pump Station Upgrade - $150,000.** This project is for the replacement of the pump station that serves the 550-foot and 713-foot service zones. The new pump station will be constructed in parallel with the new Reservoir #2. As the site for Reservoir #2 has not been purchased and construction of the reservoir will not occur until FY 2006-07, this project can be delayed until FY 2006-07. It is estimated that $50,000 of the $200,000 budget for construction will be needed in FY 2005-06 for design expenses. This leaves $150,000 available for property purchase expenditures.
- **ASR #3 Production Well - $1,090,000.** This project is for the construction of the ASR #3 well. A viable site for the ASR #3 well has not been identified; therefore construction can be postponed until FY 2006-07. These appropriations would be available for property purchase.

By postponing these projects, $1,690,000 in appropriations is available for land purchase of the two reservoir sites. An additional $110,000 would need to be transferred from Water CIP contingency, so the $1.8 million for land purchase would be available. The other projects would be funded by transfers from contingencies. The ASR #2 Well construction and the Lake Oswego Feasibility Study would be funded by a transfer of $150,000 from the Water CIP Fund contingency. The Telemetry Upgrade would be funded by a transfer of $77,500 from the Water Fund contingency. The Walnut Street project would be funded by a transfer of $58,360 from the Water Fund contingency and a transfer of $28,360 in the Water SDC Fund contingency.

OTHER ALTERNATIVES CONSIDERED

Do not approve the resolution.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Urban and Public Services, Water and Stormwater

ATTACHMENT LIST

Resolution including Attachment A
Memo from Brian Rager

FISCAL NOTES

The Resolution will transfer $135,860 from the Water Fund contingency, $58,360 from the Water SDC Fund contingency, and $260,000 from the Water CIP Fund contingency to the Water Capital Improvement Project budgets. This Resolution will also postpone certain projects as listed above with total appropriations equaling $1,690,000. These appropriations will then be used to fund the purchase of two reservoir sites.

CITY OF TIGARD, OREGON

RESOLUTION NO. 05-_____

A RESOLUTION TO APPROVE BUDGET AMENDMENT #1 TO THE FY 2005-06 BUDGET TO INCREASE APPROPRIATIONS IN THE WATER, WATER CIP, AND WATER SDC FUNDS FOR FUNDING OF CERTAIN CAPITAL WATER PROJECTS.

WHEREAS, in FY 2004-05 the Water Capital Improvement Program budget included funding for the purchase of a reservoir site near Alberta Rider School, Walnut Street reconstruction, and a Telemetry Upgrade; and

WHEREAS, these projects were not completed to the level as had been projected in FY 2004-05 and their appropriations were not carried forward into FY 2005-06; and

WHEREAS, the FY 2005-06 Water Capital Improvement Program budget does not include any funding for purchase of the reservoir site near Albert Rider; and

WHEREAS, the FY 2005-06 Water Capital Improvement Program budget includes funding for construction of Aquifer Storage Recovery (ASR) #2 well, purchase of another reservoir site on the north side of Bull Mountain, and includes some funding for the completion of the Walnut Street reconstruction and Telemetry Upgrade; and

WHEREAS, the funding budgeted for these projects is not adequate now that the cost estimates have been updated and that the funding from FY 2004-05 was not carried forward; and

WHEREAS, a new project related to the acquisition of a long term water supply has recently been identified; and

WHEREAS, the total additional funding needed for all of these projects is $2,144,220; and

WHEREAS, the Water, Water SDC, and Water CIP funds do not have sufficient contingencies to fund these projects; and

WHEREAS, staff has identified projects that can be postponed until FY 2006-07, so that their appropriations totaling $1,690,000 can be used to fund the purchase of the two water reservoir sites; and

WHEREAS, those projects that will be postponed are the construction of the reservoir site near Alberta Rider school, Upgrade of 10 MG Transfer Pump Station, and construction of ASR #3 well; and

WHEREAS, the Capital Improvement Program budget in the Water Fund needs to be increased by $135,680 to provide the additional funding for the Telemetry Upgrade and the Walnut Street reconstruction; and

WHEREAS, the Capital Improvement Program budget in the Water SDC Fund needs to be increased by $58,360 to provide additional funding for the Walnut Street reconstruction; and

WHEREAS, the Capital Improvement Program budget in the Water CIP needs to be increased by $260,000 to provide funding for the Lake Oswego Feasibility Study, the reservoir purchases, and the ASR #2 Well construction project.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The FY 2005-06 Budget is hereby amended as shown in Attachment A to this resolution to transfer $135,860 from the Water Fund contingency, $58,360 from the Water SDC Fund contingency, and $260,000 from the Water CIP Fund contingency to the Water Capital Improvement Project budgets.

This Resolution will also postpone certain projects as listed above with total appropriations equaling $1,690,000. These appropriations will then be used to fund the purchase of two reservoir sites

SECTION 2: This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2005.

_____
Mayor - City of Tigard

ATTEST:

_____
City Recorder - City of Tigard

Attachment A
FY 2005-06
Budget Amendment # 1

	FY 2005-06 Adopted Budget	Budget Amendment # 1	FY 2005-06 Revised Budget
Water Fund			
Resources			
Beginning Fund Balance	$7,204,703		$7,204,703
Grants	50,000		50,000
Development Fees & Charges	413,166		413,166
Utiltity Fees and Charges	6,755,692		6,755,692
Miscellaneous Fees and Charges	12,000		12,000
Interest Earnings	212,500		212,500
Other Revenues	14,000		14,000
Transfers In from Other Funds	63,701		63,701
Total	**$14,725,762**	**$0**	**$14,725,762**
Requirements			
Public Works Program	$5,250,315		$5,250,315
Program Expenditures Total	$5,250,315	$0	$5,250,315
Debt Service	$0		$0
Capital Improvements	$1,130,250	$135,860	$1,266,110
Transfers to Other Funds	$7,339,350		$7,339,350
Contingency	$1,000,000	($135,860)	$864,140
Total Requirements	**$14,719,915**	**$0**	**$14,719,915**
Ending Fund Balance	5,847		5,847
Grand Total	**$14,725,762**	**$0**	**$14,725,762**

Attachment A
FY 2005-06
Budget Amendment # 1

	FY 2005-06 Adopted Budget	Budget Amendment # 1	FY 2005-06 Revised Budget
Water SDC Fund			
Resources			
Beginning Fund Balance	$1,520,563		$1,520,563
Development Fees & Charges	346,272		346,272
Interest Earnings	45,000		45,000
Transfers In from Other Funds	0		0
Total	**$1,911,835**	**$0**	**$1,911,835**
Requirements			
Debt Service	$0		$0
Capital Improvements	$830,000	$58,360	$888,360
Transfers to Other Funds	$970,476		$970,476
Contingency	$100,000	($58,360)	$41,640
Total Requirements	**$1,900,476**	**$0**	**$1,900,476**
Ending Fund Balance	11,359		11,359
Grand Total	**$1,911,835**	**$0**	**$1,911,835**
Water CIP Fund			
Resources			
Beginning Fund Balance	$1,971,127		$1,971,127
Development Fees & Charges	350,000		350,000
Interest Earnings	100,000		100,000
Transfers In from Other Funds	6,570,476		6,570,476
Total	**$8,991,603**	**$0**	**$8,991,603**
Requirements			
Debt Service	$0		$0
Capital Improvements	$3,538,993	$260,000	$3,798,993
Transfers to Other Funds	$0		$0
Contingency	$373,500	($260,000)	$113,500
Total Requirements	**$3,912,493**	**$0**	**$3,912,493**
Ending Fund Balance	5,079,110		5,079,110
Grand Total	**$8,991,603**	**$0**	**$8,991,603**

MEMORANDUM

TO: Mayor and City Council

FROM: Brian Rager, Assistant Public Works Director BR

RE: Water Project Budget Amendments

DATE: August 19, 2005

Staff discovered that we have a shortage of funds needed for particular water system projects or expenses due to insufficient carry over from Fiscal Year 04/05. We have also determined since the time of the budget submittal, that certain real property transactions will cost more than what was originally budgeted. In addition, we have one feasibility study to add as well as an increase in our ASR 2 Well House project. The projects in question are described below

PROJECT	FUND	ISSUE	ADDITIONAL FUNDS NEEDED
Telemetry Upgrade	Water	Have $262,500 budgeted in 05/06. However, latest estimate from consultant shows the costs to be $340,000.	$77,500
Secure 550-Foot Reservoir No. 2 Site	Water SDC	Had $550,000 budgeted in 04/05. Did not spend, but failed to carry funds over to 05/06. Also, property value has increased and we plan to purchase 2.67 acres.	$1,200,000
Water Line Replacement – SW Walnut	Water Water SDC	Had $660,000 budgeted between both funds in 04/05. Spent $543,280, but did not carry over funds. Have $528,000 budgeted in 05/06, but will need additional to finish.	$116,720
Secure 550-Foot Reservoir No. 1 Site	Water SDC	Have $400,000 budgeted in 05/06, but due to rising property values, Staff believes we should budget more. We will purchase between 1.0 to 2.0 acres.	$600,000

ASR COT-2R (Production Well)	Water CIP	Have $1,048,500 budgeted for 05/06, but failed to carry over balance of funds from 04/05 to cover balance of consultant contract. Project will be completed in 05/06.	$100,000
Lake Oswego Feasibility Study	Water CIP	Tigard is working with the City of Lake Oswego to determine if long-term water supply to Tigard is feasible. No funds were budgeted for this in 05/06.	$50,000
TOTAL ADDITIONAL FUNDS NEEDED			**$2,144,220**

Proposed Modifications to the FY 05/06 Water Project Budget

The amount of additional funds needed for the above projects is significant. However, Staff has also found that certain other water system projects must be delayed for various reasons, and there are other projects that can purposely be delayed in order to free up the necessary funding for the above critical projects.

ASR Projects

In 05/06, Staff budgeted funds to complete a production well for a third ASR well. Also, there are funds budgeted for another test well. However, ASR 2 (located at the 10MG site on Bull Mountain Road) has been delayed due to a change in scope for that project. The estimated production rate of this well was 1.0 million gallons per day (mgd). Testing conducted after the well was drilled showed that the actual production of the well would be 2.5 mgd. Because of this change, the City's consultant team recommended that the well head improvement design be modified to accommodate a higher production rate. This change resulted in a need for more funds, which caused Staff to re-evaluate the budget and schedule. The end result is that the City can delay a third production well until FY 06/07. This delay would free up **$1,090,000** in the Water CIP fund.

550-Foot Zone Reservoir No. 2

This project has been delayed due to the City having to abandon the Alberta Rider school site as a location. Staff has been diligently working with a landowner near the Rider site and believes they will have a purchase agreement settled within one month. The 05/06 budget shows $600,000 toward design and construction of the reservoir. Due to the delay with land acquisition, construction of the reservoir can not begin this fiscal year. Further design can be achieved in preparation for construction in 06/07; Staff estimates that they will need approximately $150,000 to cover design expenses in 05/06. Therefore, of the $600,000 budgeted, there is approximately **$450,000 available.**

550-Foot Zone: 10 MG Transfer Pump Station Upgrade
This project will eventually be constructed in parallel with Reservoir No. 2. Since construction of Reservoir No. 2 is being delayed, this project must be delayed as well. Total funds budgeted in 05/06 is $200,000. Staff estimates that if design were to begin for this project in 05/06, that approximately $50,000 would be needed. Therefore, there is approximately **$150,000 available.**

The total available funds from the three projects listed above are **$1,690,000**. Based upon the anticipated additional funding need, roughly $454,220 must come from another source. There is roughly $1.5 million in contingencies between the Water, Water SDC and Water CIP funds that can be used. The balance of the needed funds can be accommodated from these contingencies.

Staff has prepared this memorandum in order to prepare the Council for the pending budget amendment that will be presented on September 13, 2005. This budget amendment is scheduled to be on the Consent Agenda and if Council has questions or concerns regarding the amendment, please feel free to contact me.

AGENDA ITEM # _____
FOR AGENDA OF September 13, 2005

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE A Resolution Approving Budget Amendment #2 to the FY 2005-06 Budget to Carry Over Funds in the Public Works Program for Replacement of Vehicles.

PREPARED BY: Michelle Wareing DEPT HEAD OK CITY MGR OK

ISSUE BEFORE THE COUNCIL

Should City Council approve Budget Amendment #2 to carry over appropriations in the Fleet/Property Management, Sanitary Sewer, and General funds for funding of replacement vehicles?

STAFF RECOMMENDATION

Staff recommends approval of Budget Amendment #2.

INFORMATION SUMMARY

In FY 2004-05, the Public Works Department budgeted to replace several vehicles in its various divisions and most of the vehicles were received in that fiscal year. A replacement vehicle for the Property Management Division, a replacement utility truck chassis for the Sanitary Sewer Division, and a replacement utility truck chassis for the Street Maintenance Division were ordered in late spring 2005, but due to some delays, they were not received before July 1, 2005. Under Generally Accepted Accounting Practices (GAAP), expenses are recorded when goods are received, not when orders are placed. Therefore, these expenses will be charged to the FY 2005-06 budget. The Department did not budget for these expenses in FY 2005-06 as it was anticipated that the replacement vehicles would be received prior to July 1, 2005.

Because the vehicle replacement appropriations were not spent in FY 2004-05, the ending fund balance carried into FY 2005-06 as a beginning fund balance includes those unused appropriations. Budget Amendment #2 transfers the necessary funds from the Fleet/Property Management, Sanitary Sewer, and General Fund contingencies.

OTHER ALTERNATIVES CONSIDERED

Do not approve Budget Amendment #2. The Department will show a year-end over-expenditure in capital outlay. It may or may not overspend its budget

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

Resolution including Attachment A

FISCAL NOTES

The Resolution transfers $25,008 from the Fleet/Property Management Fund contingency, $13,247 from the Sanitary Sewer Fund contingency, and $22,254 from the General Fund contingency to the Public Works Department's Property Management, Sanitary Sewer, and Street Maintenance Divisions' budgets.

CITY OF TIGARD, OREGON

RESOLUTION NO. 05-_____

A RESOLUTION APPROVING BUDGET AMENDMENT #2 TO THE FY 2005-06 BUDGET TO CARRY OVER FUNDS IN THE PUBLIC WORKS PROGRAM FOR REPLACEMENT VEHICLES.

WHEREAS, in FY 2004-05 the Public Works Department budgeted to replace several vehicles; and

WHEREAS, the Department ordered these vehicles in late spring of 2005; and

WHEREAS, due to delays in ordering the vehicles will be received after July 1, 2005; and

WHEREAS, the vehicles were not received until FY 2005-06, and according to Generally Accepted Accounting Principles, the expense must be recorded in FY 2005-06; and

WHEREAS, funds not spent in FY 2004-05 were carried forward into FY 2005-06; and

WHEREAS, it is now necessary to amend the FY 2005-06 Budget to allow expenditure of funds carried forward.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The FY 2005-06 Budget is hereby amended as shown in Attachment A to this resolution to transfer $25,008 from the Fleet/Property Management Fund Contingency, $13,247 from the Sanitary Sewer Fund contingency, and $22,254 from the General Fund contingency to the Public Works Department's Property Management, Sanitary Sewer, and Street Maintenance Divisions for purchase of the replacement vehicles.

SECTION 2: This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2005.

_____

Mayor - City of Tigard

ATTEST:

_____

City Recorder - City of Tigard

Attachment A
FY 2005-06
Budget Amendment # 2

	FY 2005-06 Adopted Budget	Budget Amendment # 2	FY 2005-06 Revised Budget
General Fund			
Resources			
Beginning Fund Balance	$8,671,679		$8,671,679
Property Taxes	9,582,474		9,582,474
Grants	415,656		415,656
Interagency Revenues	2,459,839		2,459,839
Development Fees & Charges	512,510		512,510
Miscellaneous Fees and Charges	252,360		252,360
Fines and Forfeitures	650,827		650,827
Franchise Fees and Business Tax	3,069,234		3,069,234
Interest Earnings	204,000		204,000
Other Revenues	25,000		25,000
Transfers In from Other Funds	2,677,233		2,677,233
Total	**$28,520,812**	**$0**	**$28,520,812**
Requirements			
Community Service Program	$11,969,249		$11,969,249
Public Works Program	2,629,088	22,254	2,651,342
Development Services Program	2,941,422		2,941,422
Policy & Administration Program	343,085		343,085
Program Expenditures Total	$17,882,844	$22,254	$17,905,098
Debt Service	$0		$0
Capital Improvements	$0		$0
Transfers to Other Funds	$4,507,732		$4,507,732
Contingency	$1,000,000	($22,254)	$977,746
Total Requirements	**$23,390,575**	**$0**	**$23,390,575**
Ending Fund Balance	$5,130,237		$5,130,237
Grand Total	**$28,520,812**	**$0**	**$28,520,812**

Attachment A
FY 2005-06
Budget Amendment # 2

	FY 2005-06 Adopted Budget	Budget Amendment # 2	FY 2005-06 Revised Budget
Sanitary Sewer Fund			
Resources			
Beginning Fund Balance	$8,569,263		$8,569,263
Utiltity Fees and Charges	2,074,957		2,074,957
Interest Earnings	188,000		188,000
Other Revenues	(5,000)		(5,000)
Transfers In from Other Funds	0		0
Total	**$10,827,220**	**$0**	**$10,827,220**
Requirements			
Public Works Program	$899,832	13,247	$913,079
Program Expenditures Total	$899,832	$13,247	$913,079
Debt Service	$0		$0
Capital Improvements	$2,990,000		$2,990,000
Transfers to Other Funds	$574,216		$574,216
Contingency	$679,000	($13,247)	$665,753
Total Requirements	**$5,143,048**	**$0**	**$5,143,048**
Ending Fund Balance	5,684,172		5,684,172
Grand Total	**$10,827,220**	**$0**	**$10,827,220**

Attachment A
FY 2005-06
Budget Amendment # 2

	FY 2005-06 Adopted Budget	Budget Amendment # 2	FY 2005-06 Revised Budget
Fleet/Property Management Fund			
Resources			
Beginning Fund Balance	$60,000		$60,000
Interest Earnings	3,350		3,350
Transfers In from Other Funds	1,258,707		1,258,707
Total	**$1,322,057**	**$0**	**$1,322,057**
Requirements			
Public Works Program	$1,141,217	25,008	$1,166,225
Program Expenditures Total	$1,141,217	$25,008	$1,166,225
Debt Service	$0		$0
Capital Improvements	$0		$0
Transfers to Other Funds	$82,348		$82,348
Contingency	$90,000	($25,008)	$64,992
Total Requirements	**$1,313,565**	**$0**	**$1,313,565**
Ending Fund Balance	8,493		8,493
Grand Total	**$1,322,057**	**$0**	**$1,322,057**

AGENDA ITEM # _____
FOR AGENDA OF September 13, 2005

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE A Resolution Approving Budget Amendment #3 to the FY 2005-06 Budget to Increase Appropriations in the Street Maintenance Division Budget for Purchase of a Sign Plotter and Computer.

PREPARED BY: Michelle Wareing DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Shall the City Council approve Budget Amendment #3 to increase appropriations in the Street Maintenance Division budget for purchase of a sign plotter and computer?

STAFF RECOMMENDATION

Staff recommends approval of Budget Amendment # 3.

INFORMATION SUMMARY

Sign standards are set by the federal government through the Manual on Uniform Traffic Control Devices (MUTCD). New rules and regulations have been issued in the new MUTCD. The City's current computer, plotter, and program are over five years old and needs to be updated to comply with new rules. Also, the current plotter was not designed to handle the materials now required by the MUTCD and is showing signs of wear.

The new plotter and computer will not only allow the City to comply with new rules, but will also allow the Street Maintenance Division to make 99% of the signs in-house and design special signs upon request. The new computer will be able to store the designs, so when they are needed again, staff will not have to redesign as they do now.

The total cost of the new plotter and computer is $21,000. Budget Amendment #3 will transfer this amount from the General Fund's contingency to the Street Maintenance Division's budget. It should be noted that the Street Maintenance Division is fully funded by Gas Tax revenues that are transferred into the General Fund.

OTHER ALTERNATIVES CONSIDERED

Do not approve Budget Amendment #3 and wait for current plotter to fail.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

Resolution including Attachment A

FISCAL NOTES

The Resolution transfers $21,000 from the General Fund contingency to the Public Works Department's Street Maintenance Division's budget

CITY OF TIGARD, OREGON

RESOLUTION NO. 05-_____

A RESOLUTION TO APPROVE BUDGET AMENDMENT #3 TO THE FY 2005-06 BUDGET TO INCREASE APPROPRIATIONS IN THE STREET MAINTENANCE DIVISION BUDGET FOR PURCHASE OF A SIGN PLOTTER AND COMPUTER.

WHEREAS, sign standards are set by the federal government through the Manual on Uniform Traffic Control Devices (MUTCD); and

WHEREAS, new regulations and rules have been issued in the new MUTCD; and

WHEREAS, the City of Tigard's current sign computer and plotter need to be updated to comply with the new rules and the plotter was not designed to handle the new materials; and

WHEREAS, the new computer and plotter will allow the City to comply with the new rules, make 99% of the signs in-house, and design special signs upon request; and

WHEREAS, it is necessary to amend the FY 2005-06 budget to increase appropriations for this expenditure.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The FY 2005-06 Budget is hereby amended as shown in Attachment A to this resolution to transfer $21,000 from the General Fund contingency to the Public Works Department's Street Maintenance Division's budget for purchase of the new computer and plotter.

SECTION 2: This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2005.

_____
Mayor - City of Tigard

ATTEST:

_____
City Recorder - City of Tigard

Attachment A
FY 2005-06
Budget Amendment # 3

	FY 2005-06 Revised Budget	Budget Amendment # 3	FY 2005-06 Revised Budget
General Fund			
Resources			
Beginning Fund Balance	$8,671,679		$8,671,679
Property Taxes	9,582,474		9,582,474
Grants	415,656		415,656
Interagency Revenues	2,459,839		2,459,839
Development Fees & Charges	512,510		512,510
Miscellaneous Fees and Charges	252,360		252,360
Fines and Forfeitures	650,827		650,827
Franchise Fees and Business Tax	3,069,234		3,069,234
Interest Earnings	204,000		204,000
Bond/Note Proceeds	0		0
Other Revenues	25,000		25,000
Transfers In from Other Funds	2,677,233		2,677,233
Total	**$28,520,812**	**$0**	**$28,520,812**
Requirements			
Community Service Program	$11,969,249		$11,969,249
Public Works Program	2,651,342	21,000	2,672,342
Development Services Program	2,941,422		2,941,422
Policy & Administration Program	343,085		343,085
General Government	0		0
Program Expenditures Total	$17,905,098	$21,000	$17,926,098
Debt Service	$0		$0
Capital Improvements	$0		$0
Transfers to Other Funds	$4,507,732		$4,507,732
Contingency	$977,746	($21,000)	$956,746
Total Requirements	**$23,390,575**	**$0**	**$23,390,575**
Ending Fund Balance	$5,130,237		$5,130,237
Grand Total	**$28,520,812**	**$0**	**$28,520,812**

AGENDA ITEM # _____
FOR AGENDA OF September 13, 2005

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Amendment to the License Agreement for Maintenance of the Fields Property

PREPARED BY: A.P. Duenas DEPT HEAD OK A.P. Duenas CITY MGR OK CP

ISSUE BEFORE THE COUNCIL

Shall the City Council approve the attached amendment to the original license agreement dated November 14, 2002 for maintenance of the Fields property east of the library site?

STAFF RECOMMENDATION

Staff recommends that Council approve, by motion, the attached amendment to the license agreement and authorize the City Manager to execute the amendment.

INFORMATION SUMMARY

The original License Agreement for maintenance of the Fields property east of and adjacent to the library property was executed on November 14, 2002 and expired on November 14, 2004. This agreement provided a license to cross City property for purposes of maintaining the Fields property east of the library site. It also included the promise of an easement for permanent access to the Fields property for purposes of future development.

Although the original license has expired, there is a continuing need for periodic maintenance of the Fields property. The grass on the property could become a fire hazard if not mowed periodically and could endanger lives and surrounding property if not adequately maintained. This amendment extends the license until such time as a permanent easement is conveyed, or Fields obtains alternate access to the property. In addition, it adds restrictions to prohibit crossing during periods of wet weather or unsuitable ground conditions, adds a revised exhibit to depict the location for crossing, and maintains the terms for granting of an access easement as intended in the original agreement.

OTHER ALTERNATIVES CONSIDERED

None

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Not applicable

ATTACHMENT LIST

1. Amendment to License Agreement with revised Exhibit C
2. License Agreement dated November 14, 2002

FISCAL NOTES

There is no cost for the amendment to the original license agreement.

I:\eng\gus\council agenda summaries\9-13-05 amendment to license agreement for maintenance of the fields property als.doc

AMENDMENT TO LICENSE AGREEMENT

THIS AMENDMENT ("Amendment") is made and effective the ____ day of August, 2005, by and between THE CITY OF TIGARD, an Oregon municipal corporation ("City") and FRED W. FIELDS ("Fields") with regard to that certain License Agreement between the parties having an effective date of _____ (the "Agreement").

The Agreement is amended in the following particulars:

1. A new Section 2.3 is added as follows:

"2.3 Effect of Weather and Other Conditions on Use of License Area. The City and Fields agree that the rights of Fields granted by the Agreement shall be exercised only at mutually agreeable times during periods of dry weather in order to minimize the impacts of such entry on the City Property. In general, the parties acknowledge and agree that such rights will ordinarily only be exercised during the months of July, August and September of each calendar year during the term of the license granted herein, but the parties also acknowledge that other times of the year may be appropriate for the exercise of said rights depending upon then-existing conditions."

2. Section 3 is amended to provide that, despite the passage of two (2) years from the effective date of the Agreement, the license to use the License Area granted to Fields continues, and shall continue, in full force and effect until such time as the Easement described in Section 3 of the Agreement is granted by the City to Fields, or Fields obtains alternate access to the property.

3. Exhibit "C" to the Agreement is hereby amended and superceded by Exhibit "C" to this Amendment which the parties agree correctly describes the License Area.

Subject to the foregoing amendments, the Agreement is ratified and affirmed by the parties and is incorporated in this Amendment as though set forth in full. In the event of any contradiction in the provisions of this Amendment and the Agreement, the provisions hereof will prevail. All capitalized terms not defined herein shall have the same meaning provided for in the Agreement.

IN WITNESS WHEREOF, this Agreement has been signed by the parties effective the date first above written.

THE CITY OF TIGARD,
an Oregon municipal corporation

By: _____
Craig Prosser, Interim City Manager

_____
Fred W. Fields

EXHIBIT C
AMENDMENT TO LICENSE AGREEMENT

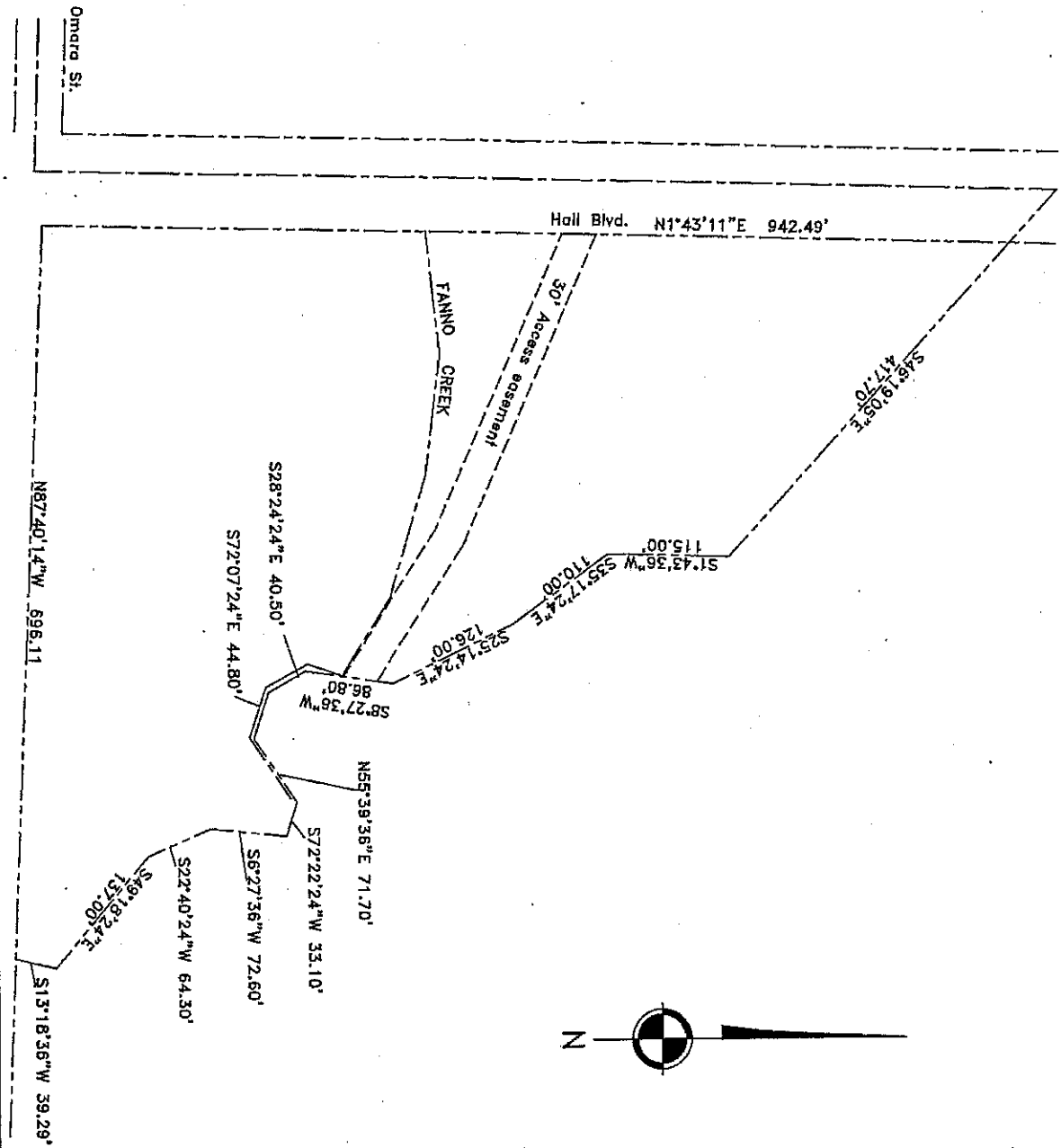
Legal Description of Access Easement

A tract of land situated in the Southeast one-quarter of Section 2 and the Southwest Quarter of Section 1,Township 2 South, Range 1 West, Willamette Meridian, City of Tigard, Washington County, Oregon, described as follows:

Beginning at the 5/8" iron rod and 1 ¼" aluminum cap in a monument box set at the intersection of SW Hall Blvd. and SW Omara St as shown on Survey No. 29031 as recorded in the Washington County Survey Records; thence N 01° 43' 11" E, along the centerline of SW Hall Blvd., a distance of 525.04; thence S 66° 14' 44" E, leaving said centerline, a distance of 53.94 feet to the easterly right-of-way of SW Hall Blvd. and **the True Point of Beginning;** thence S 66° 14' 44" E a distance of 301.29 feet; thence S 56° 44' 12" E a distance of 159.89 feet to the easterly line of the City of Tigard; thence N 08° 27' 36" E, along said easterly line, a distance of 33.05 feet; thence N 56° 44' 12" W a distance of 148.52 feet; thence N 66° 14' 44" W a distance of 315.93 feet to the easterly right-of-way of SW Hall Blvd 50.00 feet from centerline; thence S 01° 43' 11" W, along said right-of-way, a distance of 32.36 feet to the true point of beginning.

I:\eng\gus\library project\library property purchase agreement\license ag ext legal description (010605).doc

EXHIBIT "C"
PAGE 2 OF 2



LICENSE AGREEMENT

This License Agreement ("Agreement") is made and effective the 14th day of November, 2002, by and between THE CITY OF TIGARD, an Oregon municipal corporation ("City") and FRED W. FIELDS ("Fields").

Recitals

A. City is the owner of certain real property in the City of Tigard, Washington County, Oregon described in Exhibit A attached (the "City Property").

B. Fields is the owner of other real property in the City of Tigard, Washington County, Oregon and described in Exhibit B attached (the "Fields Property"). The Fields Property is located to the east of and adjacent to the City Property.

C. Fields desires a license to cross the City Property for purposes of maintaining the Fields Property, and if necessary, an easement for ingress, egress and utilities to service potential development of the Fields Property. The City is willing to grant Fields such a license. By this Agreement, the parties intend to set forth the terms of said license and possible easement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and Fields agree as follows:

Agreement

1. License to Cross City Property: Fields, and his agents, employees, representatives and contractors, may cross the City Property only at the location described in Exhibit C attached hereto (the "License Area"), and only for the purpose of maintaining the Fields Property. The rights granted to Fields are subject to the terms and conditions set forth in this Agreement.

2. Conditions Precedent to Exercise of License Rights: The following are conditions precedent to the right of Fields to cross the City Property:

2.1 Insurance. Fields shall obtain insurance for property damage and liability in a form, with limits, and placed with one or more insurers, acceptable to the City and naming the City as an additional insured. Such policy(ies) of insurance shall provide, along with other terms acceptable to the City, that no termination of or change in such policy(ies) may be effected without not less than thirty (30) days' prior written notice to the City. Fields will provide to the City policies or certificates in evidence of such insurance prior to any exercise of the rights granted herein, and shall keep such policy or policies of insurance in full force and effect throughout the term of this Agreement and any extensions or renewal hereof.

CERTIFIED TO BE A TRUE AND
CORRECT COPY OF THE ORIGINAL
FIRST AMERICAN TITLE INSURANCE
COMPANY Escrow Department
By _____
CERTIFIED

2.2 Notice Before Entry onto City Property. Fields will not enter onto the City Property except upon not less than ten (10) days prior written/verbal notice given to the City Engineer.

3. Term of Agreement/Grant of Easement if Required at End of Term. This Agreement will commence on the effective date hereof, and will continue in operation until construction of the extension of Wall Street from Hall Boulevard to the Fields Property (the "Wall Street Extension"). During the term of this Agreement, the City agrees to take action necessary to delineate a seventy (70) foot wide right of way for the Wall Street Extension. If the Wall Street Extension has not been constructed by the second (2nd) anniversary of the effective date of this Agreement, the license to use the License Area described in Exhibit C will terminate. Notwithstanding the foregoing, if the Wall Street Extension has not been constructed on or before the second (2nd) anniversary of the effective date of this Agreement, the City will grant to Fields, prior to expiration of the license, an easement sufficient to provide for ingress, egress and installation of utilities servicing the Fields Property. Said easement will be comprised of the southerly fifty (50) feet of the City Property (the "Easement Area"). The Easement Area, when added to an adjacent twenty (20) foot wide strip of property currently owned by Fields, will provide a seventy (70) foot wide access and utility way to serve the Fields Property. Said easement will remain effective until the Wall Street Extension is complete and first opened for public use.

3.1 Consideration for Easement. Upon execution of this Agreement by the parties, Fields and the City will jointly engage the services of Zell & Associates to appraise the fair market value of the Easement Area and that portion of the twenty (20) foot wide strip of property owned by Fields and described above that lies within the area delineated for the Wall Street Extension. The fee for said appraisal will be paid by Fields. In consideration for the grant of the easement described in Section 3 above, Fields will pay to the City the difference between the appraised value of the Easement Area and the appraised value of that portion of the twenty (20) foot wide strip owned by Fields that lies within the delineation for the Wall Street Extension. Attached as Exhibit D is a map generally describing the areas of the delineation of the Wall Street Extension, the twenty (20) foot wide strip of property owned by Fields, and the Easement Area.

4. Indemnity. Fields indemnifies and holds harmless the City from any and all claims, harm or loss arising from or related to Fields' entry onto or use of the City Property. This duty to indemnify the City includes the duty to defend the City, at Fields' cost, from and against any such claims, harm or loss by counsel reasonably acceptable to the City.

5. Attorneys' Fees. If any action, including action pursuant to bankruptcy laws, is initiated to interpret or enforce the terms of this Agreement, the prevailing party in such action shall be entitled, in addition to all other relief that may be granted, to an award of attorneys' fees and costs of action at trial and on appeal and review.

6. Entire Agreement/Binding Effect/Modification. This Agreement contains the entire understanding and agreement of the parties with regard to the subject matter hereof, and supercedes any and all prior, contemporaneous and subsequent representations, statements, negotiations and discussions of the parties. This Agreement is binding on the heirs, successors and assigns of the parties hereto, and may not be amended or modified except by written instrument signed by the parties.

IN WITNESS WHEREOF, this Agreement has been signed by the parties effective the date first above written.

THE CITY OF TIGARD,
an Oregon municipal corporation

By: _____
William A. Monahan, City Manager

Fred W. Fields
Fred W. Fields

G:\Real Estate\Tigard\Library\Site\Documents\LicenseAg6(111302).doc

AGENDA ITEM # _____
FOR AGENDA OF September 13, 2005

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Relinquishment of Temporary Emergency Turnaround Easements at Arbor Pointe Subdivision.

PREPARED BY: G Berry DEPT HEAD OK AP Duenas CITY MGR OK C. Prosser

ISSUE BEFORE THE COUNCIL

Should City Council approve the requested relinquishment of temporary emergency turnaround easements?

STAFF RECOMMENDATION

That City Council, by motion, approve the relinquishment of easements and authorize the City Manager to sign the attached "Relinquishment of Easement".

INFORMATION SUMMARY

The Meyer's Farm subdivision (Sub 99-02) included three streets that extend past its westerly boundary and terminated just within the Arbor Pointe subdivision (Sub 03-14) at temporary turnarounds within City-owned easements. The turnarounds were installed within the Arbor Pointe parcel before the subdivision was constructed. Now that the subdivision has been completed and streets have been extended, the turnarounds are no longer needed and the developer is requesting that the easements for the turnarounds be extinguished. The easement agreement provides that the City may extinguish the easements once the streets are extended.

For the easement in this particular situation, City Council approval is sufficient to relinquish interest. Staff has reviewed the request and has found that the City has no further interest in the easements proposed to be relinquished and recommends approval of the request.

OTHER ALTERNATIVES CONSIDERED

None

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

None

ATTACHMENT LIST

Attachment 1: Applicant's Request
Attachment 2: Relinquishment of Easement
Attachment 3: Easement Agreement; Doc. No. 2000073517 with Exhibits B and A (8 pages)
Attachment 4: Map

FISCAL NOTES

The easements requested to be relinquished were conveyed to the City at no cost as a conditional of approval for the Meyer's Farm subdivision and have no current value.

i:\eng\greg\arbor pointe easements\arbor pt easements als.doc

West Hills
DEVELOPMENT

June 23, 2005

Tigard City Council
C/O Greg Berry, P.E.
13125 SW Hall Blvd
Tigard, Oregon 97223

Re: Arbor Pointe Temporary Turnaround Easement

Tigard City Council:

West Hills Development is the owner and developer of the approved subdivision, Arbor Pointe. I have included a title report to demonstrate our ownership of the property.

West Hills Development hereby requests that the City Council approve the relinquishment of the three temporary turnaround easements identified as A, B and C in document number 200073517 and recorded 9-12-00.

The temporary turnaround easements are no longer needed due to the extension of the streets in Arbor Pointe, upon recordation of the plat. I have included a copy of the easement for your review.

Your consideration in this matter is greatly appreciated.

Respectfully,

Terry Kinney
Land Development Manager
West Hills Development

15500 SW JAY STREET BEAVERTON, OR 97006
503.641.7342 f 503.641.7661

Attachment 2

AFTER RECORDING RETURN TO

City of Tigard
City Records Division
13125 SW Hall Blvd
Tigard, OR 97223

RELINQUISHMENT OF EASEMENT

The CITY OF TIGARD, OREGON, a municipal corporation duly organized and existing under the laws of the State of Oregon, hereinafter called CITY, hereby releases any and all interest in temporary emergency turnaround easements situated in Washington County, Oregon, conveyed to CITY by Document No. 2000073517, Washington County, Oregon.

CITY no longer has a need for the easements described above, attached hereto and incorporated herein by this reference.

Dated this _____ day of _____. 2005.

CITY OF TIGARD, OREGON

By: _____
City Manager

STATE OF OREGON)

County of Washington)

On _____, 2005, _____ personally appeared before me, who, being duly sworn, did say that he is the City Manager of the City of Tigard, Oregon, and that said instrument was signed on behalf of said City by authority of its Council; and he acknowledged said instrument to be the City voluntary act and deed.

_____
NOTARY PUBLIC OF OREGON

My Commission Expires: _____

Attachment 3

NN.

EASEMENT

Between

Lauren K. Stanley & Julie Ann Stanley, as tenants in common

And

City of Tigard

After recording, return to (Name, Address, Zip):
City of Tigard
13125 SW Hall Blvd.
Tigard, OR 97223

SPACE RESERVED FOR RECORDER'S USE

STATE OF OREGON
County of Washington } SS

I, Jerry R. Hanson, Director of Assessment and Taxation and Ex-Officio County Clerk for said county, do hereby certify that the within instrument of writing was received and recorded in book of records of said county.

Jerry R. Hanson, Director of Assessment and Taxation, Ex-Officio County Clerk

Doc : 2000073517
Rect: 262822 57.00
09/12/2000 10:05:48am

THIS AGREEMENT made and entered into on May 22, 2000, by and between Lauren K. Stanley & Julie Ann Stanley as tenants in common, hereinafter called the first party, and City of Tigard, hereinafter called the second party, WITNESSETH:

WHEREAS: The first party is the record owner of the following described real property in Washington County, State of Oregon, to-wit:

See Exhibit"B" Legal descrition for Stanley's property

and has the unrestricted right to grant the easement hereinafter described relative to the real estate.

NOW, THEREFORE, in view of the premises and in consideration of $ NONE by the second party to the first party paid, the receipt of which is acknowledged by the first party, it is agreed:

The first party hereby grants, assigns and sets over to the second party an easement, to-wit:

See Exhibit "A" Temporary emergency turnaround easements

(Insert a full description of the nature and type of easement granted by the first party to the second party.)

(OVER)

FATCO. NO. 702845-18 905021

First American Title Accommodation
Recording Assumes No Liability

The second party shall have all rights of ingress and egress to and from the real estate (including the right from time to time, except as hereinafter provided, to cut, trim and remove trees, brush, overhanging branches and other obstructions) necessary for the second party's use, enjoyment, operation and maintenance of the easement hereby granted and all rights and privileges incident thereto.

Except as to the rights herein granted, the first party shall have the full use and control of the above described real estate.

The second party agrees to save and hold the first party harmless from any and all claims of third parties arising from the second party's use of the rights herein granted.

The period of this easement shall be per Exhibit "A", always subject, however, to the following specific conditions, restrictions and considerations:

If this easement is for a right of way over or across the real estate, the center line of the easement is described as follows:

Not applicable

and the second party's right of way shall be parallel with the center line and not more than Not applicable feet distant from either side thereof.

During the existence of this easement, maintenance of the easement and costs of repair of the easement, if damaged by natural disasters or other events for which all holders of an interest in the easement are blameless, shall be the responsibility of (check one): ☐ the first party; ☒ the second party; ☐ both parties, share and share alike; ☐ both parties, with the first party responsible for _____% and the second party responsible for _____%. (If the last alternative is selected, the percentages allocated to each party should total 100.)

During the existence of this easement, holders of an interest in the easement who are responsible for damage to the easement because of negligence or abnormal use shall repair the damage at their sole expense.

This agreement shall bind and inure to the benefit of, as the circumstances may require, not only the parties hereto but also their respective heirs, executors, administrators, assigns, and successors in interest.

In construing this agreement, where the context so requires, the singular includes the plural and all grammatical changes shall be made so that this agreement shall apply equally to individuals and to corporations. If the undersigned is a corporation, it has caused its name to be signed and its seal, if any, affixed by an officer or other person duly authorized to do so by its board of directors.

IN WITNESS WHEREOF, the parties have hereunto set their hands in duplicate on the day and year first written above.

Lauren K. Stanley

Lauren K. Stanley

Julie Ann Stanley

Julie Ann Stanley

FIRST PARTY

STATE OF OREGON, County of Washington) ss. July 17, 2000

This instrument was acknowledged before me on _____,

by LAUREN K. STANLEY AND JULIE ANN STANLEY

This instrument was acknowledged before me on _____,

by _____

as _____

of _____

OFFICIAL SEAL
L.E. SORRELL
NOTARY PUBLIC-OREGON
COMMISSION NO. 326612
MY COMMISSION EXPIRES NOV. 16, 2003

Notary Public for Oregon

My commission expires 11-16-03

Agustin P. Duenas

City of Tigard

SECOND PARTY

STATE OF OREGON, County of Washington) ss. September 8, 2000

This instrument was acknowledged before me on _____,

by Agustin P. Duenas

This instrument was acknowledged before me on _____,

by _____

as _____

of _____

OFFICIAL SEAL
DIANE M JELDERKS
NOTARY PUBLIC-OREGON
COMMISSION NO. 326578
MY COMMISSION EXPIRES SEPT. 07, 2003

Notary Public for Oregon

My commission expires 9/7/03

EXHIBIT "B"

Legal desription of the Lauren K.
Stanley & Julie Ann Stanley property

Beginning at a point on the North line of the Southwest 1/4 of the Northwest 1/4 of Section 8, Township 2 South, Range 1 West, Willamette Meridian, Washington County, Oregon, which bears North 89° 51′ East 330.0 feet from the Northwest corner of said Southwest 1/4 of the Northwest 1/4; thence South 0° 06′ 20" West parallel with the West line of said Section 8, a distance of 1319.79 feet to the South line of said Northwest 1/4; thence North 89° 53′ 25" East along said South line, 330.0 feet to a point; thence North 0° 06′ 20" East parallel with said West line, 575.02 feet to a point; thence North 89° 51′ East parallel with said North line, 23 feet to a point; thence North 0° 06′ 20" East parallel with said West line, 745.0 feet to a point on the North line of said Southwest 1/4 of the Northwest 1/4; thence South 89° 51′ West 353 feet to the place of beginning.

May 12, 2000

EXHIBIT "A"

TEMPORARY EMERGENCY TURNAROUND EASEMENTS

LEGAL DESCRIPTIONS "A", "B" AND "C"

THE PURPOSE OF THESE LEGAL DESCRIPTIONS ARE TO PROVIDE FOR TEMPORARY EMERGENCY TURN AROUND EASEMENTS UPON THAT LAND IN TITLE TO LAUREN K. AND JULIE ANN STANLEY AS DESCRIBED IN DEED RECORDING No. 98-065723, FOR THE BENEFIT OF THE CITY OF TIGARD.

IT SHALL BE UNDERSTOOD THAT WHEN THE PUBLIC ROADWAYS OF S.W POLLARD LANE, S.W. COOPER LANE AND S.W. BRAY LANE ARE EXTENDED ONTO THE STANLEY PROPERTY AS PUBLIC ROADWAYS, THEN EASEMENTS "A", "B", AND "C", SHALL BECOME NULL AND VOID, AND THE OWNERS, THEIR HEIRS OR ASSIGNS MAY VACATE THE EASEMENTS.

THE FOLLOWING DESCRIBED EASEMENTS "A", "B", AND "C", BEING A LOCATED ON A PORTION OF THAT LAND AS DESCRIBED IN DEED RECORDING No. 98-065723, IN DEED TO LAUREN K. AND JULIE ANN STANLEY, SITUATED IN THE NW QUARTER OF SECTION 8, TOWNSHIP 2-SOUTH, RANGE 1-WEST OF THE WILLAMETTE MERIDIAN, WASHINGTON COUNTY, OREGON

EASEMENT "A"

BEGINNING AT A POINT LOCATED N 00°07'22" E 7.00 FEET FROM THE THE N.W. CORNER OF LOT 100, OF THE DULY RECORDED PLAT OF "MEYERS FARM". THENCE ALONG THE ARC OF A 25.00 FOOT RADIUS CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 90°00'00" (THE CHORD OF WHICH BEARS S 44°51'04" W 35.36 FEET) AN ARC DISTANCE OF 39.27 FEET; THENCE S 00°08'56" E 13.00 FEET; THENCE S 89°51'04" W 20.00 FEET; THENCE N 00°08'56" W 13.00 FEET; THENCE ALONG THE ARC OF A 25.00 FOOT RADIUS CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 90°00'00" (THE CHORD OF WHICH BEARS N 45°08'56" W 35.36 FEET) AN ARC DISTANCE OF 39.27 FEET; THENCE N 00°08'56" W 28.00 FEET; THENCE N 89°51'04" E 70.13 FEET TO THE WEST BOUNDARY OF THE PLAT OF "MEYERS FARM";
THENCE S 00°07'22" W 28.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 2990 SQUARE FEET.

EASEMENT "B"

BEGINNING AT A POINT LOCATED N 00°07'22" E 7.00 FEET FROM THE THE N.W. CORNER OF LOT 81, OF THE DULY RECORDED PLAT OF "MEYERS FARM". THENCE ALONG THE ARC OF A 25.00 FOOT RADIUS CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 90°00'00" (THE CHORD OF WHICH BEARS S 44°51'04" W 35.36 FEET) AN ARC DISTANCE OF 39.27 FEET; THENCE S 00°08'56" E 13.00 FEET; THENCE S 89°51'04" W 20.00 FEET; THENCE N 00°08'56" W 13.00 FEET; THENCE ALONG THE ARC OF A 25.00 FOOT RADIUS CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 90°00'00" (THE CHORD OF WHICH BEARS N 45°08'56" W 35.36 FEET) AN ARC DISTANCE OF 39.27 FEET; THENCE N 00°08'56" W 28.00 FEET; THENCE N 89°51'04" E 70.13 FEET TO THE WEST BOUNDARY OF THE PLAT OF "MEYERS FARM";
THENCE S 00°07'22" W 28.00 FEET TO THE POINT OF BEGINNING.

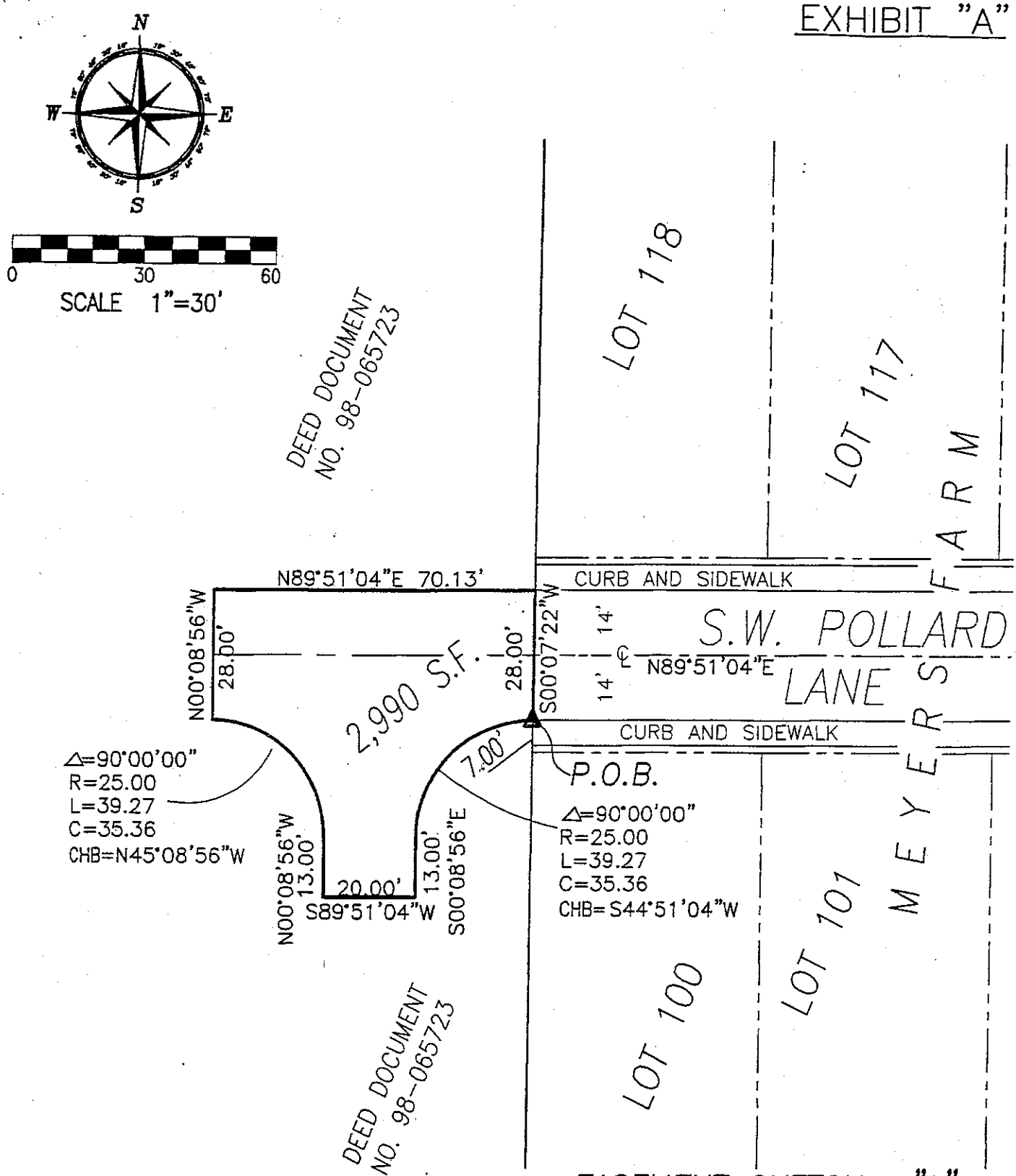
CONTAINING: 2990 SQUARE FEET.

EASEMENT "C"

BEGINNING AT A POINT LOCATED N 00°07'22" E 7.00 FEET FROM THE THE N.W. CORNER OF LOT 61, OF THE DULY RECORDED PLAT OF "MEYERS FARM". THENCE ALONG THE ARC OF A 25.00 FOOT RADIUS CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 90°00'00" (THE CHORD OF WHICH BEARS S 44°51'04" W 35.36 FEET) AN ARC DISTANCE OF 39.27 FEET; THENCE S 00°08'56" E 13.00 FEET; THENCE S 89°51'04" W 20.00 FEET; THENCE N 00°08'56" W 13.00 FEET; THENCE ALONG THE ARC OF A 25.00 FOOT RADIUS CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 90°00'00" (THE CHORD OF WHICH BEARS N 45°08'56" W 35.36 FEET) AN ARC DISTANCE OF 39.27 FEET; THENCE N 00°08'56" W 28.00 FEET; THENCE N 89°51'04" E 70.13 FEET TO THE WEST BOUNDARY OF THE PLAT OF "MEYERS FARM";
THENCE S 00°07'22" W 28.00 FEET TO THE POINT OF BEGINNING.

CONTAINING: 2990 SQUARE FEET.

EXHIBIT "A"

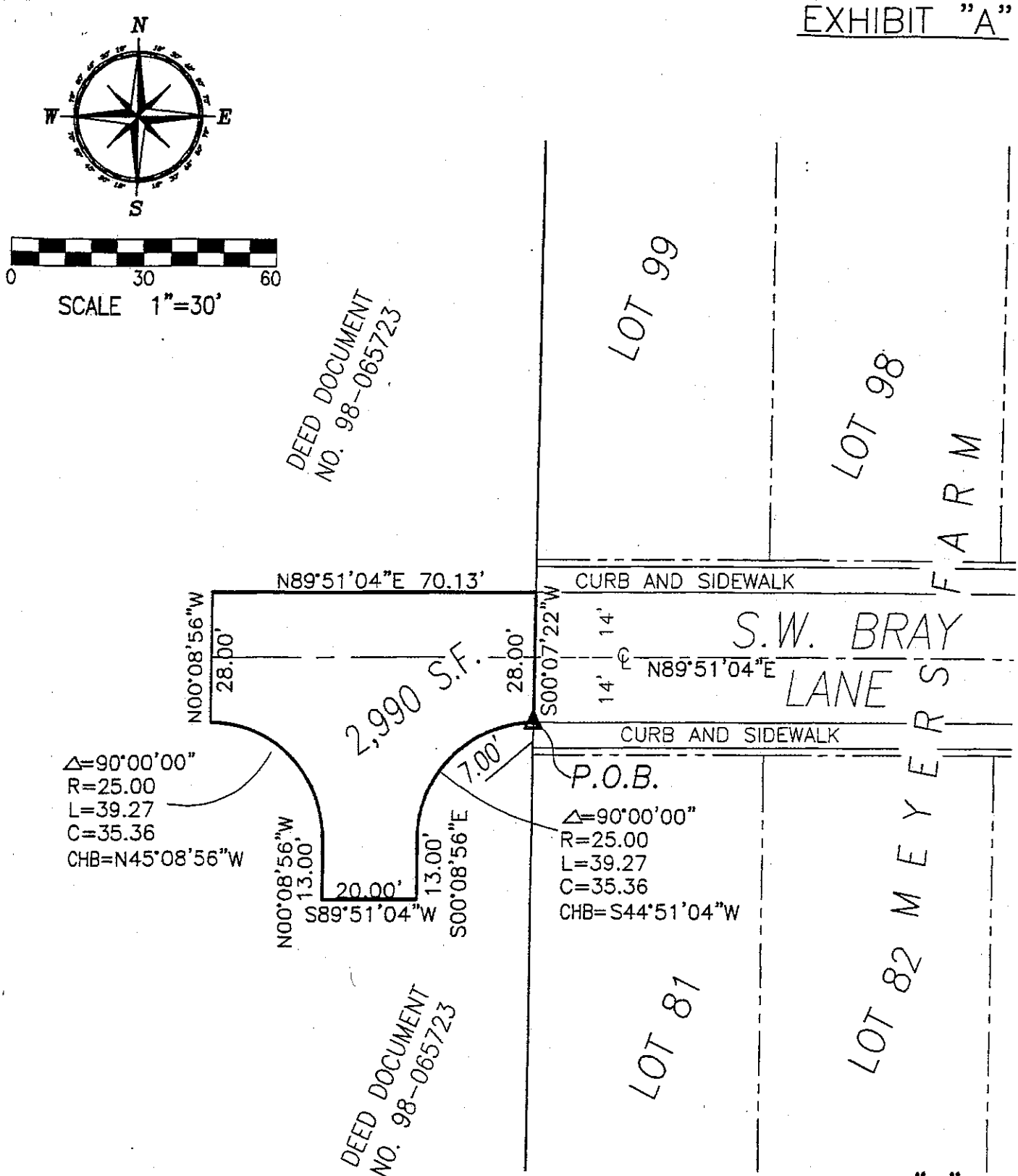


EASEMENT SKETCH - "A"
FOR A
TEMPORARY EMERGENCY TURNAROUND
FOR THE BENEFIT OF THE
CITY OF TIGARD.

HARRIS-McMONAGLE ASSOCIATES, INC.
ENGINEERS-SURVEYORS
12555 S.W. HALL BLVD. TIGARD, OR 97223-6287
PHONE: (503) 639-3453 FAX: (503) 639-1232

DATE: MAY 12, 2000

EXHIBIT "A"

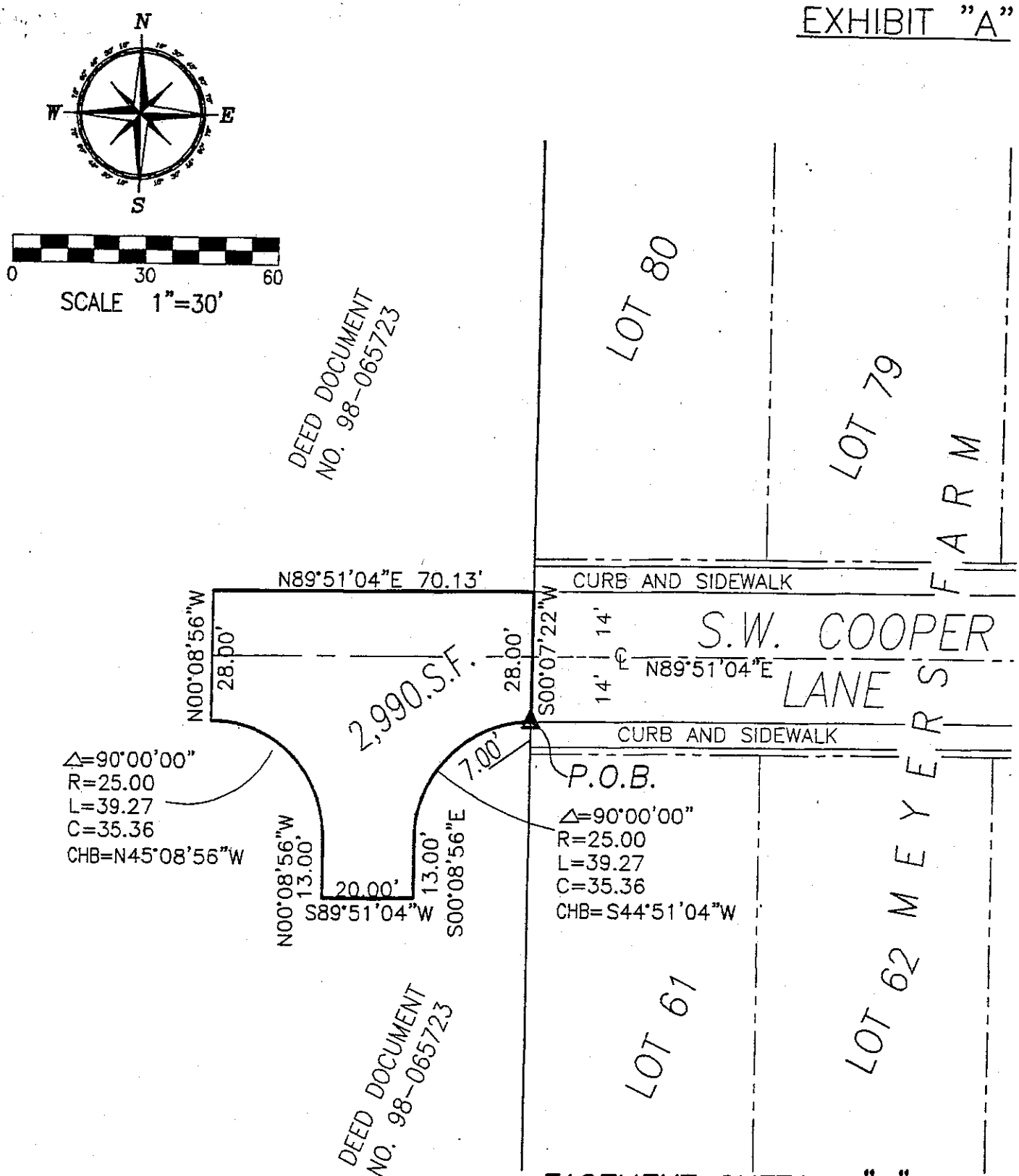


EASEMENT SKETCH - "B"
FOR A
TEMPORARY EMERGENCY TURNAROUND
FOR THE BENEFIT OF THE
CITY OF TIGARD.

HARRIS-McMONAGLE ASSOCIATES, INC.
ENGINEERS-SURVEYORS
12555 S.W. HALL BLVD. TIGARD, OR 97223-6287
PHONE: (503) 639-3453 FAX: (503) 639-1232

DATE: MAY 12, 2000

EXHIBIT "A"



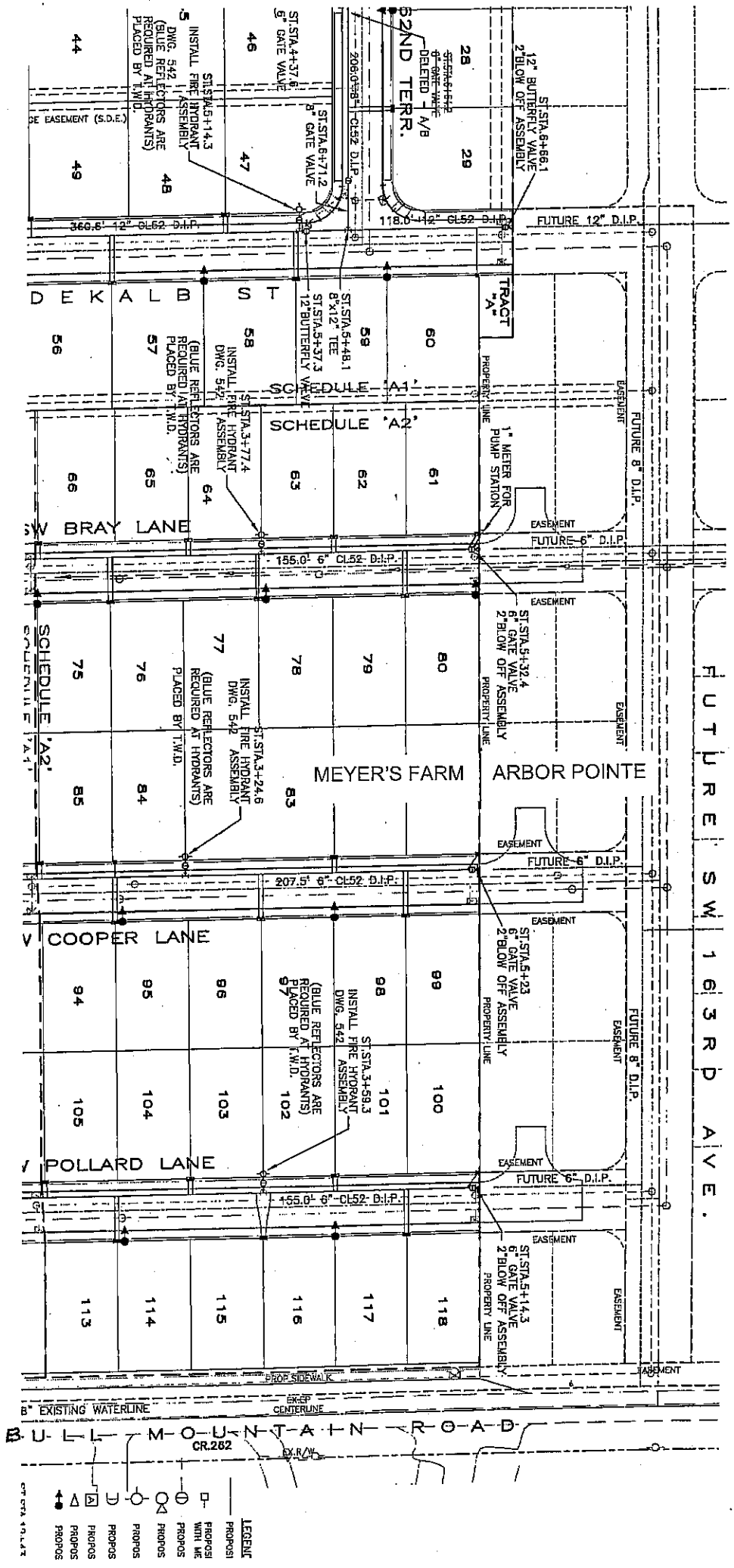
EASEMENT SKETCH-"C"
FOR A
TEMPORARY EMERGENCY TURNAROUND
FOR THE BENEFIT OF THE
CITY OF TIGARD.

HARRIS-McMONAGLE ASSOCIATES, INC.
ENGINEERS-SURVEYORS
12555 S.W. HALL BLVD. TIGARD, OR 97223-6287
PHONE: (503) 639-3453 FAX: (503) 639-1232

8

DATE: MAY 12, 2000

Attachment 4



AGENDA ITEM # _____
FOR AGENDA OF Sept. 13, 2005

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Washington Square Mall BZPP Grant Application Approval

PREPARED BY: Dennis J. Dirren DEPT HEAD OK WMO CITY MGR OK CL

ISSUE BEFORE THE COUNCIL

The purpose of this request is to have City Council approve/allow application for the Washington Square Mall Buffer Zone Protection Plan (BZPP) Grant. Per City of Tigard grant procedures, Council approval is necessary for grants exceeding an award amount of $25,000. If so approved and awarded, this grant would allocate $41,240 for security/safety enhancements and increased patrol functions at the Washington Square Mall.

STAFF RECOMMENDATION

Approve/allow application for the Washington Square Mall BZPP Grant.

INFORMATION SUMMARY

The Buffer Zone Protection Plan is an integral piece of the overall preventive and protective measures the Department of Homeland Security has established. This plan is intended to foster a cooperative environment in which Federal, state and local authorities, along with private industry, can carry out their respective protection responsibilities more efficiently and effectively. The BZPP will not supersede existing facility response plans or authorities that were developed for response to terrorist threats or attacks.

The objective of this grant is to identify and/or enhance the existing procedures to prevent a terrorist incident at and around critical infrastructures in the United States. Additionally, the BZPP will identify and recommend solutions to any challenges or issues regarding prevention and protective measures. This will include a gap analysis to identify the need for mission-essential equipment for first responders.

The areas in and directly around the Washington Square Mall have been identified as having a potential for terrorist attack and/or related activities. Through the BZPP process, several protective measures were suggested that would significantly increase overall security. Foremost are the current communication problems that occur within the Mall. Several "dead zones" exist where the police radios are completely blocked and do not transmit or receive. In addition, a majority of Mall Security Officers do not carry compatible radios and therefore are not interoperable with TPD first responders. Communication problems have been identified in numerous critical incidents throughout the years as being a priority for improving response time, coordination, and overall effectiveness.

Therefore, if so awarded, a mobile repeater (radio antenna) would be purchased and placed within the Mall to alleviate dead zones. Additional radios, interoperable with TPD, would be purchased and distributed among Mall Security to increase communication effectiveness. Other enhancements are suggested and listed within Attachment 1.

OTHER ALTERNATIVES CONSIDERED

Do not approve/allow grant application.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

None.

ATTACHMENT LIST

Attachment 1: Washington Square Mall BZPP Grant Application (abridged)

FISCAL NOTES

Grant award = $41,240

No local match required.

If awarded, a budget amendment will be necessary and will be coordinated with the Finance Department, per grant procedures.

Washington Square Mall
Tigard, OR
Buffer Zone Protection Plan
May 16, 2005

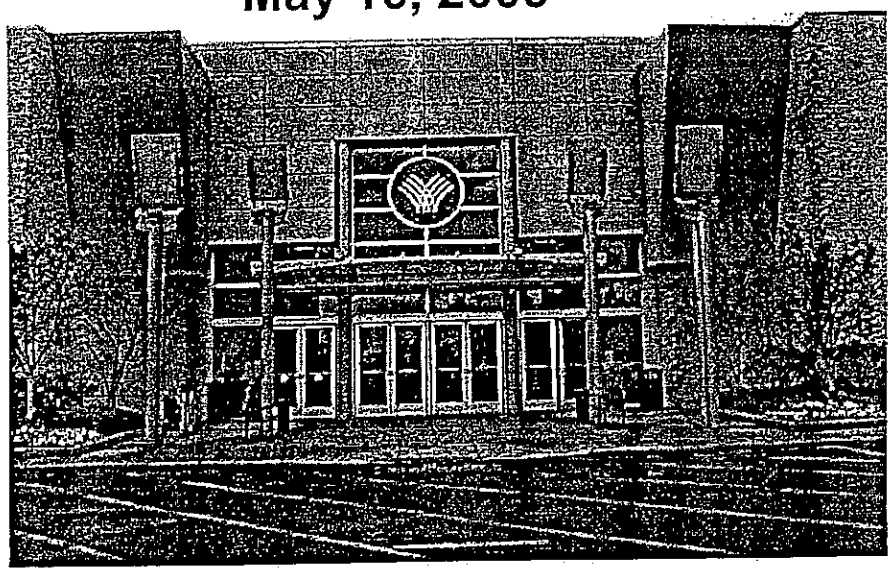


Figure 1 View of Entrance to Washington Square Mall (source: http://www.shopwashingtonsquare.com/controller/site)

This plan was developed based on a cooperative effort among the Washington Square Mall, Tigard Police Department, Oregon State Police and the U.S. Department of Homeland Security, Protective Security Division.

Version 11/08/2004

1. INTRODUCTION

The President's National Strategy for the Physical Protection of Critical Infrastructures and Key Assets of February 2003 directed the development of a comprehensive national approach to physical protection. This Strategy identified specific initiatives to drive near-term national protection priorities and updated the resource allocation process. Following the President's direction, the Department of Homeland Security (DHS) is to work closely with key public and private sector entities to ensure the strategy is implemented to secure the United States from terrorist threats or attacks.

1.1 Purpose

As part of the national effort to protect critical infrastructure assets, the DHS Protective Security Division (PSD) will assist state and local authorities, as well as private industry, in developing Buffer Zone Protection Plans (BZPPs). The purpose of a BZPP, and protective measures planning in general, is to develop effective preventive measures that make it more difficult for terrorists to conduct surveillance or launch attacks from the immediate vicinity of Critical Infrastructure/Key Asset (CI/KA) targets.

Specifically, BZPPs will:

- Define a buffer zone outside the security perimeter of a CI/KA target;
- Identify specific threats and vulnerabilities associated with the buffer zone;
- Analyze and categorize the level of risk associated with each vulnerability;
- Recommend corrective measures within a buffer zone that will reduce the risk of a successful terrorist attack by:
    - **Devaluing** a target by making it less attractive or too costly for an aggressor to attack;
    - **Deterring** an event from happening (e.g., through warning signs, physical barriers, cameras, and security guards);
    - **Detecting** an aggressor who is planning or committing an attack or the presence of a hazardous device or weapon; and
    - **Defending** against attack by delaying or preventing an aggressor's movement toward the asset or use of weapons and explosives.
- Define the command and control structure for terrorism prevention specific to an individual CI/KA target; and
- Review established security measures to ensure they are consistent with the Homeland Security Advisory System (HSAS) and disseminate the information to appropriate authorities and emergency responders.

1.2 Scope

The BZPP is a strategic document that:

- Applies to a CI/KA site;

  Provides planning guidance and suggested actions to be taken during each HSAS level; and

  Illustrates ways in which federal, state, and local agencies can most effectively synchronize their preventive actions.

The BZPP should not supersede existing site response plans or authorities that were developed for response to terrorist threats or attacks. Rather, it is intended to foster a cooperative environment in which federal, state, and local authorities, along with private industry, can carry out their respective protection responsibilities more efficiently and effectively.

1.3 BZPP Development Steps

1. Site Critical Asset Identification
2. Threat Identification
3. Vulnerability Identification
4. Protective Plan Development
   a. Define Specific Protective Team Tasks
   b. Resource Identification and Acquisition
5. DHS Follow-Up with State and Local Jurisdictions

2. SITE MANAGEMENT ASSUMPTIONS

This BZPP assumes that the preventing and responding law enforcement agencies and the site's management actively participate in a life cycle of domestic incident management activities, including:

- *Awareness*: Participate in security awareness practices and adhere to HSAS levels as appropriate.
- *Prevention*: Practice prevention to avoid incidents, intervene as necessary in order to stop incidents from occurring, and attempt to mitigate a given incident's effects.
- *Preparedness*: Are involved in activities to identify risks or threats and requirements or shortfalls and have plans to remedy shortfalls over time.

  Response and Recovery: Cooperate actively with federal, state, and local entities in emergency response and recovery activities as needed.

3. SITE CRITICAL ASSET IDENTIFICATION

3.1 Site Information

Site Name	Washington Square Mall
Owner/Operator	The Macerich Company
Address	9585 S.W. Washington Square Road, Tigard, OR 97223 (503) 639-8860
Latitude / Longitude	Latitude 45.45177 45°27'6.37" N Longitude – 122.78122 122°46'52.39"W
Site Type	Sector: Commercial Asset Segment: Business Asset
Purpose of Site (Brief description of the reason for the site to be a critical infrastructure or key asset site.)	Washington Square Mall is a landmark in the Portland Area, and provides a large selection of shopping and dining venues to the local community. Oregon's largest Nordstrom store is located in the mall.
Description of Site: (Insert details of operations, modes of transportation used, inherently dangerous commodities or activities at the site, and other information that may increase the understanding of the critical and key qualities of the site)	Washington Square is an indoor shopping mall. The five anchor department stores are Nordstrom, Meier & Frank, JC Penney, Sears, and Mervyn's. There are more than 140 specialty stores, including Gap, Eddie Bauer, Bombay Co, Sbarro, Subway and Edo Japan are a few of the restaurants. Figure 1 is view of outside entrance. Figure 2 is an aerial view of the mall. Figure 3 is an indoor view. Figures 4 & 5 are level 1 and food Court diagrams Washington Square Mall was built in 1974 and underwent a complete remodeling in 1994. The gross lease area is 1,244,500 square feet. However; the Mall currently has construction expansion underway that is scheduled for completion on November 5, 2005. The construction expansion will increase the lease area by 800,000 square feet and include a multi-level parking structure. There are over 6,600 parking spaces at the mall. Hours of operation are: Mon– Sat 10am– 7pm Sun 10am-7pm. The mall employs full time unarmed security officers. The 24-hour security office has an outside entrance on the east side of the mall between the Summit Court entrance and JC Penney. Figure 6 is a view of guest services inside the mall. Washington Square Mall is located in the fastest growing county in the Portland Metropolitan area. It has an average of 1.2 million shoppers each month that will increase to approx 1.5 million with the current expansion in progress. Average household incomes are over $80,000. Retail GLA = 1.3M sf Total Sales = $481M total sales last 12 months Population 585,000 Median Age = 35.1 Average Expenditure = $65.50 Average Length of Visit = 84 minutes Shopping Frequency = 3.1 times per month. Washington Square Mall is owned and operated by The Macerich

	Co, a real estate investment trust listed on the NYSE w/symbol of MAC. Macerich is one of the largest owner/operators of regional malls in the U.S and Largest in the western U.S. with 56 malls and 21 community centers in 221 states.	
Strategic Importance of the Site: • **Economic** • **Socio-Political** • **National Security** • **Infrastructure Support**	Washington Square Mall provides jobs and tax dollars for the local community.	
Does the facility have a Standard Operating Procedure (SOP) for emergencies?	Yes, an emergency procedures manual and crisis management plan.	
Does the current SOP address: • **Chemical spills/releases** • **Break-ins** • **Hostage situations** • **Terrorist incidents** • **Natural disasters**	Yes Yes Yes Yes Yes	
Points of Contact (POCs)	**24/7 POC** Jerry Edwards Emergency Coordinator/Security Director 503 639-7192	**BZPP POC** Lt. Darwin DeVeny Tigard Police Dept 503 718-2569

3.4 Characteristics and Locations of the Site's Critical Assets

Information on the site's critical assets is taken directly from a formal security-based Vulnerability Assessment, a DHS-led Security Advisory Visit, DHS Common Vulnerabilities and Indicators, Warnings of Terrorist Activities for Infrastructure Sectors and Segments, or a similar detailed examination of the site's operation, physical plant, and criticality within the related infrastructure.

CRITICAL ASSET	ASSET CHARACTERISTICS	LOCATION OF CRITICAL ASSET
Food Court	87 acre shopping mall focusing on public access areas where customers congregate and transit. 35,000 – 45,000 persons visit the mall every Saturday and Sunday. Crowds increase up to 90,000 during holidays. The food court is capable of seating 350 persons.	The food court is centrally located on the second floor of the Mall.
Summit Court area	The Summit Court area routinely hosts local events, performers and vendors during weekends. During an event, 300-1500 persons congregate in the area.	The Summit Court area is located on the main floor in the center of the mall. It also includes the customer services counter.
HVAC System	The Mall HVAC system has three chillers providing warm and cool area to the corridors and 110 businesses; as well as the food court and Summit Court.	The HVAC is located on the 2nd floor Mezzanine with access via roof or 2 interior security doors.

4. THREAT IDENTIFICATION

RELATED THREAT STREAM	METHOD OF ATTACK	ASSETS VULNERABLE TO METHOD
1. Aviation	Airplane into store roof or interior.	Food Court/ Summit Court/ HVAC
2. Bombings	Vehicle-borne improvised explosive device (VBIED) driven into mall interior.	Food Court/ Summit Court
3. Biological Material	Gain access to roof, or through security doors, and insert agent into HVAC intake	HVAC System
4. Chemical Material	Gain access to roof, or through security doors, and insert agent into HVAC intake.	HVAC System
5. Maritime	N/A	N/A
6. Nuclear/Radiological Material	Gain access to roof, or through security doors, and insert agent into HVAC intake.	HVAC
7. Sabotage/Hazardous Materials	Man-portable improvised explosive device (IED). Small-arms attack	Food Court/ Summit Court Food Court/ Summit Court
8. Cyber Attacks	N/A	N/A

5. VULNERABILITY IDENTIFICATION

THREAT STREAM	CRITICAL ASSET	OPERATIONAL BASED THREATS	CARVER SCORE
2, 7	Food Court	OPERATIONAL BASED THREAT: Crash VBIED through retractable doors located below the food court area. VULNERABILITY: The food court is a centralized east side entrance. There are no vehicle barriers in place to prevent access into the mall. OPERATIONAL BASED THREAT: Emplacement of a man-portable IED in the food court. VULNERABILITY: The food court is an unrestricted area with 2 entrances and multiple opportunities exist to leave an IED in close proximity to large numbers of people. The food court has only video surveillance; no physical security measures are in place. OPERATIONAL BASED THREAT: Small-arms assault (active shooter) in the food court. Vulnerability: The food court has only video surveillance and random security patrol. There are no noticeable physical security measures in place.	38
2, 7	Summit Court	OPERATIONAL BASED THREAT: Crash VBIED through retractable doors at the east centralized entrance into the Summit Court and customer service area. VULNERABILITY: The Summit Court is located in the center of the mall. The east entrance retractable doors have no vehicle barriers in place to prevent direct access into the interior. OPERATIONAL BASED THREAT: Emplace a man-portable IED in Summit Court area. VULVERABILITY: The Summit Court is an unrestricted venue with multiple opportunities to leave an IED in close proximity to large numbers of people. There are no noticeable physical security measures in place. OPERATIONAL BASED THREAT: Small-arms (active shooter) assault in Summit court and customer service area. VULNERABILITY: The Summit Court is an unrestricted venue with large numbers of people. There are no noticeable physical security measures in place.	43

2	Parking Garages	OPERATIONAL BASED THREAT: Detonate a VBIED in the Multi-level parking garage at the SW corner of the mall facility or in the Underground 1 level parking (currently under construction) on the west side of mall. VULNERABILITY: Vehicles are not screened or checked prior to entering the parking garages.	30
3,4,6	HVAC	OPERATIONAL BASED THREAT: Insert hazardous material into the HVAC intake. VULNERABILITY: Overcome roof access padlock or force Security doors to gain access to HVAC System.	36

6. PROTECTIVE PLAN DEVELOPMENT

6.1 Buffer Zone Description

General Description:	Washington Square Mall is located in Tigard, Oregon southwest of downtown Portland in northwest Oregon. The mall is adjacent to the intersection of Rout4es 210 & 217. Interstate 5 is east of the mall. Accesses to the mall from highway 217 are the Greenburg Road, Scholls Ferry Road and Hall Boulevard exits.
County or Counties:	Washington County
Local Government(s):	Tigard City Council Craig Dirksen craigd@ci.tigard.or.us
Boundaries	Washington Square is bordered to the N by Hall Boulevard, to the west and south by highway 217, and to the east by Greenburg.
Populated Areas Around Facility	Washington County has a population of 445,000 and an area of 724 square miles. The city of Tigard has a population of 45,000 and an area of 10.9 miles.
Major Transportation Routes (i.e., roads, rail lines, waterways)	Washington Square Mall is approximately 21.3 miles SW of Portland International Airport, 2.2 miles NE of the Greyhound bus station, and 10.5 miles SW of the Amtrak Portland Union Station. Interstate 5, which runs north to south , is just east of the mall.
Boundary/Perimeter Protection Mechanisms	Video surveillance and security patrols.
Surrounding Critical Infrastructure	There are 3 schools within a 1 mile radius and 5 hotels less than one mile from the mall.
Location of Police/Fire/ Rescue in Relation to Facility	Tigard Police Department 13125 SW Hall Blvd., Tigard, Oregon 97223 headquarters is approximately 2.4 miles SE of the site. The Tualatin Valley Fire & Rescue 20665 SW Blanton St., Aloha, Oregon 97007 headquarters is approximately 7.8 miles NW of the site.

6.2 Buffer Zone Images

6.3 Security Implementation Table

Overall security within and surrounding this CI/KA site will be significantly increased through implementation of the buffer zone protection measures recommended below.. These protective measures reduce the risk associated with specific operational based threats.

HSAS LEVEL	TYPE OF ACTION	PROTECTIVE MEASURE	WHY?	WHO?	STATUS
GREEN (Low)	Devalue				
	Detect	Install vehicle barriers at main entrances	Prevent VBIED attack.	Management	Recommend
	Deter	Roving patrol	Crime Prevention	Mall security	In Place
		Normal Police patrol.	Crime prevention.	Tigard PD	In Place
		Augment locks with an alarm system to restrict roof access	Prevent unauthorized access to roof and intro of contaminant to HVAC.	Management Mall Security.	Recommend
	Defend	Utilize allocated space to establish a police office at the facility.	Improve police response and detection of terrorism.	Tigard PD DHS	Recommend
		Install Police-band repeaters in mall to include link between Tigard PD and Mall security.	Enable police communications inside the facility and interoperable communications with mall security.	Tigard PD DHS	Recommend
BLUE (Guarded)	Devalue				
	Detect				
	Deter				
	Defend				
YELLOW (Elevated)	Devalue				
	Detect	Conduct terrorism awareness training	Train mall security and staff.	Tigard PD	Recommend

	Deter	Post security in food court during peak hours.	Deter attack.	Management	Recommend
	Defend				
ORANGE (High)	Devalue				
	Detect	Broadcasts and signs warning not to leave bags unattended.	Raise awareness/ Detect IEDs	Management	Recommend
	Deter	Additional Police patrols.	Deter/detect suspicious activity.	Tigard PD	Recommend
	Defend				
RED (Severe)	Devalue				
	Detect	Limit mall access points.	Deter attacks/ Detect IEDs.	Mall Security	Recommend
		Establish checkpoints.	Deter attacks/ Detect IEDs.	Tigard PD Mall security	Recommend
		Institute personnel and bag searches	Deter attacks/ Detect IEDs.	Mall Security	Recommend
	Deter				
	Defend				

6.4 Correlation of Threat Levels

8.4 Recommended Enhancements

ITEM	QUANTITY	PURPOSE	UNIT PRICE	TOTAL	REQUESTING AGENCY
Police-Band Repeater	1	Provide Tigard Police with the ability to communicate inside the mall.	$10,000	$10,000	Tigard PD
Portable police radios (Motorola MTS 5000) and charger	7	Provide ability for mall security officers to communicate with Tigard Police.	$3,820	$26,740	Tigard PD
Hardware, computer, integrated, w/ printer	2	Provide Tigard Police w/ enhanced mall presence, access to police data systems, enhance networking, logistical support, cyber security and detection.	$1500	$3,000	Tigard PD
Handheld computer (PDA)	2	For emergency police response application.	$500	$1,000	Tigard PD

UNITED STATES DEPARTMENT OF HOMELAND SECURITY

Information Analysis and Infrastructure Protection
Protective Security Division - Protective Measures Section
Buffer Zone Protection Plan Program

VULNERABILITY REDUCTION PURCHASING PLAN

VRPP NO.		DATE	
Washington Square Mall		9595 SW Wash. Sq. Rd., Tigard, OR 97223	
ADDITIONAL BZPP SITE(S)		ADDITIONAL ADRESS(ES)	
Tigard Police Department		13125 S.W. Hall Blvd., Tigard, OR 97223	
Lt. Darwin DeVeny		(503) 639-6168 x2569	
11965@ci.tigard.or.		(503) 572-4187	

EQUIPMENT AND RELATED ITEMS

ITEM NO.	AEL NO.	DESCRIPTION	UNIT COST	QTY.	TOTAL COST
1	6.6	Repeater	$10,000.00	1	$10,000.00
2	6.6.21.4	Installation, repeater	$500.00	1	$500.00
3	6.2	Radio, portable w/charger	$3,820.00	7	$26,740.00
4	4.14	Hardware, computer, integrated w/printer	$1,500.00	2	$3,000.00
5	4.15	Handheld computer for Emergency Response	$500.00	2	$1,000.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
					$0.00
		VRPP GRANT TOTAL			$41,240.00
VRPP	LOAN NO.	EQUIPMENT RECEIVED/EN ROUTE			$0.00
		GRAND TOTAL (NOT TO EXCEED $50,000)			$41,240.00

RJO REQUEST	Tigard Police Department	
	Darwin DeVeny/ Lieutenant	
	(503) 639-6168 x2569	
	6/1/2005	

SHSA CONCURRENCE	AGENCY/ORGANIZATION NAME	
	NAME/TITLE	
	PHONE NUMBER & E-MAIL ADDRESS	
	DATE	

SAA CONCURRENCE	AGENCY/ORGANIZATION NAME	
	NAME/TITLE	
	PHONE NUMBER & E-MAIL ADDRESS	
	DATE	

AGENDA ITEM # _____
FOR AGENDA OF 9/13/05

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Adopt a Resolution for National Incident Management System (NIMS) and Incident Command System (ICS)

PREPARED BY: Mike Lueck DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

Approve a city resolution formally adopting the NIMS and ICS operating premise.

STAFF RECOMMENDATION

Formally adopt NIMS and ICS as the City's Emergency Management Operating System.

INFORMATION SUMMARY

The City of Tigard, specifically Police and Public Works departments, receive federal grant money for public safety and emergency management training and equipment. The federal government recently has mandated compliance measures required to continue to receive those monies. Tigard has only a couple of compliance measures to complete prior to the October 2005 deadline and formally adopting NIMS and ICS will expedite those efforts.

OTHER ALTERNATIVES CONSIDERED

None

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Goal: **Public Safety**: The program, through initial and enhancement training, will maximize the volunteer's effectiveness in emergency and non-emergency events, developing a strong partnership in emergency preparedness and community caring. The equipment purchase will help supplement the stable funds required to provide uninterrupted public safety and emergency services. The community residents, business owners, and service providers will understand their roles through effective communication to successfully enhance those services.

ATTACHMENT LIST

"Resolution" to adopt the NIMS and Incident Command System Operating Systems.

FISCAL NOTES

The City of Tigard's CERT program is federally funded through a Department of Homeland Security (DHS) and Federal Emergency Management Administration (FEMA) grant. Police programs are also funded through federal Law Enforcement Terrorism Prevention and Urban Area Security Initiative grants where they have purchased equipment and provided training back-fill. The grants are overseen by Oregon Department of State Police and Oregon Emergency Management (OEM) and managed by the City's CERT Coordinator and Police Training Officer. The City is currently drafting another application for federal grant money to support this program through 2007.

CITY OF TIGARD, OREGON

RESOLUTION NO. 05-_____

A RESOLUTION ADOPTING THE NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS) AS THE FOUNDATION FOR INCIDENT COMMAND, COORDINATION, AND SUPPORT ACTIVITIES AND ESTABLISHING POLICY THAT THE CITY OF TIGARD WILL PROVIDE APPROPRIATE NIMS TRAINING FOR RESPONSIBLE CITY PERSONNEL

WHEREAS, response to and recovery from major emergencies and disasters requires integrated professional management and coordination; and

WHEREAS, the President directed the Secretary of the Department of Homeland Security to develop and administer a National Incident Management System (NIMS) to standardize and enhance incident management procedures nationwide; and

WHEREAS, the National Incident Management System provides a structure and process to effectively coordinate responders from multiple disciplines and levels of government and to integrate them with resources from the private sector and non-governmental organizations; and

WHEREAS, use of the National Incident Management System, which has as a key component the Incident Command System (ICS), will improve the City of Tigard's ability to manage major emergencies and disasters; and

WHEREAS, failure to adopt and use the National Incident Management System may preclude Tigard from receiving federal preparedness grants or reimbursement for costs expended during major emergency and disaster response and recovery operations.

NOW, THEREFORE, BE IT RESOLVED by the Tigard City Council that:

SECTION 1: The National Incident Management System is hereby adopted as the foundation for incident command, coordination and support activities, and the Incident Command System shall be the City of Tigard's official incident response system.

SECTION 2: It shall be the policy of the City of Tigard to provide appropriate training on the National Incident Management System and Incident Management System and their core components to personnel responsible for managing and/or supporting major emergency, disaster, and day-to-day field operations.

SECTION 3: This resolution is effective immediately upon passage.

PASSED: This _____ day of _____ 2005.

_____
Mayor - City of Tigard

ATTEST:

_____
City Recorder - City of Tigard

AGENDA ITEM # _____
FOR AGENDA OF September 13, 2005

CITY OF TIGARD, OREGON
LOCAL CONTRACT REVIEW BOARD (LCRB) AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Award of Contract for the Construction of the SW Ash Ave Sanitary Sewer (Sewer Reimbursement District No. 35)

PREPARED BY: G Berry DEPT HEAD OK AP Duenas CITY MGR OK C Prosser

ISSUE BEFORE THE LOCAL CONTRACT REVIEW BOARD

Shall the Local Contract Review Board approve the contract award for the construction of the SW Ash Ave Sanitary Sewer?

STAFF RECOMMENDATION

Staff recommends that the Local Contract Review Board, by motion, approve the contract award to NW Kodiak Construction in the amount of $110,000.

INFORMATION SUMMARY

On August 9, 2005, City Council approved the formation of Sewer Reimbursement No. 35 to provide sewer service to nine lots along SW Ash Avenue near Garrett Street. The requested approval would award the contract for the construction of the sewer. Through the City's Neighborhood Sewer Extension Program, the City will install public sewers to each lot within the Reimbursement District and the owners will reimburse the City for a fair share of the cost of the public sewer at the time of connection to the sewer. In addition, each owner will be required to pay a connection fee, currently $2,635, before connecting to the line.

This project was advertised for bids on August 2 and August 4, 2005, in the *Daily Journal of Commerce* and *Tigard Times* respectively. The bid opening was conducted on August 16, 2005 and the bid results are:

Kodiak Construction, LLC	St. Helens, OR	$110,000
Dunn Construction	Portland, OR	$194,620
Engineer's Estimate		**$85,500**

The higher than expected bids are partially from an increase of material prices during the past year spurred by the high cost of oil and fuel. Some contractors have indicated that the material prices have risen 20% across the board over the past year. This includes higher prices for steel, concrete, PVC pipe, hauling cost, etc. Recent closures of gravel pits have doubled the cost of rock at the remaining pits. Dump sites are now much fewer and contractors are hauling longer distances to dispose of excess material. Insurance costs and increased wages continue to drive up labor and other costs. Contractors initially absorbed the cost increases, but are generally not able to do that anymore and are now incorporating those increases in their bids. Prices received in previous bids can no longer be relied upon because of the cumulative effect of the cost increases.

In addition, the contractors are aware of the unusually poor soil conditions along Ash Ave and vicinity. The soils reports for this project indicated a significant section of unsuitable soil that would require foundation stabilization during the pipe installation. A similar nearby project recently encountered unstable soils that significantly increased cost to the contractor. There is a higher risk factor that the contractors must consider in their bids when soil conditions are unfavorable and sewers need to be installed relatively deep. Both contractors that submitted bids have installed sewers for the City recently and are well aware of the soil conditions and the difficulty of installing relatively deep sewers in the area. Rebidding the project at this time of the year may produce even higher bids than the low bid submitted because of the higher material prices and the fact that contractors are now extremely busy and are not apt to submit lower prices as the summer draws to a close. Delaying the project until next spring introduces the risk of potentially higher prices for materials and labor that may result in even higher bids at that time. Based on the apparent increase in the prices for materials, past experience with similar jobs, on the soil conditions in the area, and the depths at which the sewers need to be installed, the low bid appears reasonable, even though it is almost 29% higher than the Engineer's Estimate.

OTHER ALTERNATIVES CONSIDERED

Reject all bids and either rebid the project immediately, or delay the project until spring of 2006.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

None

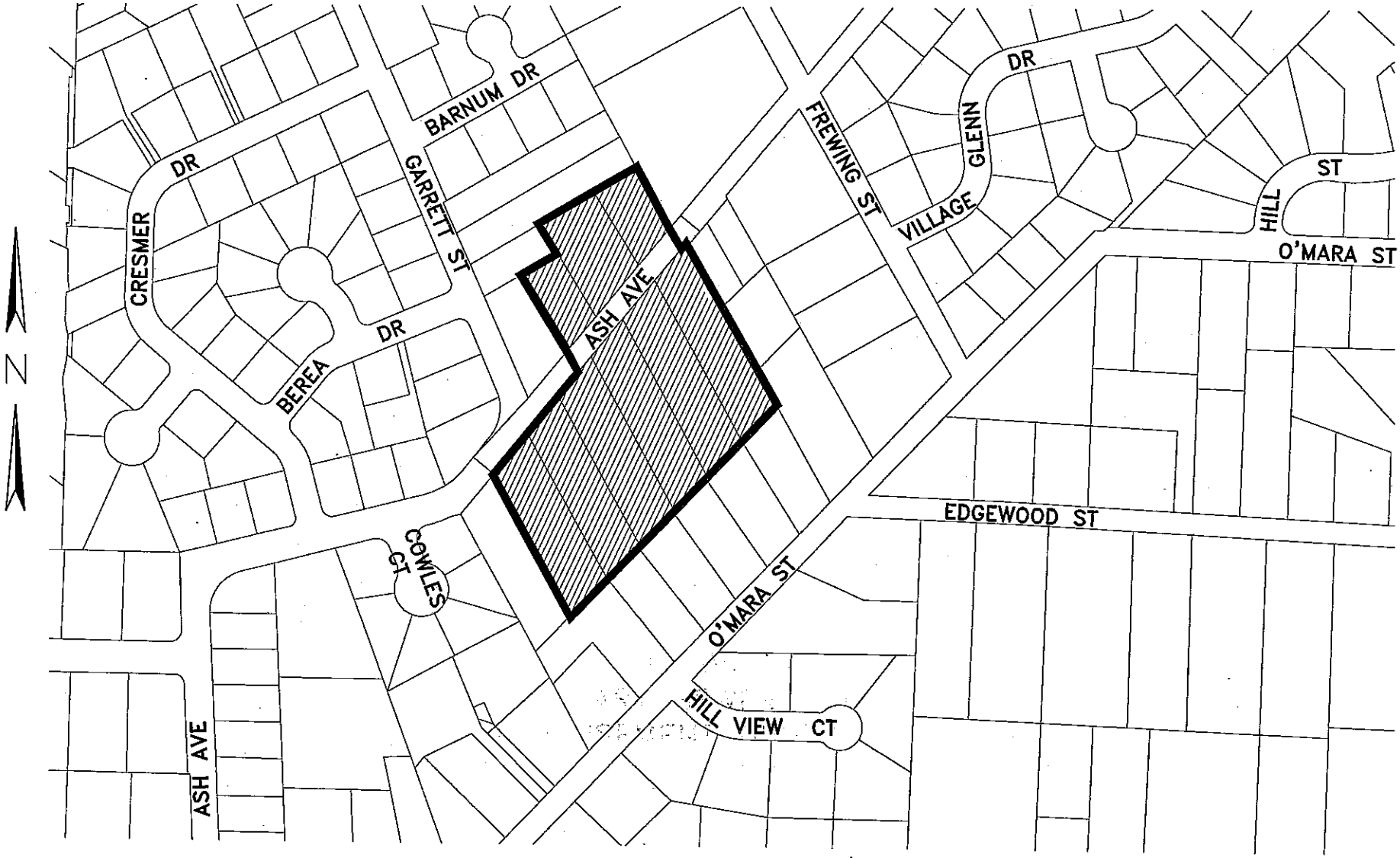
ATTACHMENT LIST

Attachment 1. Project location map

FISCAL NOTES

The amount of $2,500,000 is available in the FY 2005-06 Citywide Sewer Extension Program for this and other sewer extension projects. The available funding is sufficient to award a contract of $110,000 to NW Kodiak Construction, LLC.

ASH AVENUE
FY 2005-06 SANITARY SEWER EXTENSION PROGRAM
REIMBURSEMENT DISTRICT #35
A PORTION OF THE SW 1/4 OF SECTION 2 T2S R1W W.M.



VICINITY MAP
NTS

Revision 1

AGENDA ITEM # _____
FOR AGENDA OF September 13, 2005

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Indonesian Resource Cities Exchange Report

PREPARED BY: Margaret Barnes DEPT HEAD OK MB CITY MGR OK CL

ISSUE BEFORE THE COUNCIL

This presentation is informational only; no Council action is required at this time.

STAFF RECOMMENDATION

Accept the report.

INFORMATION SUMMARY

Tigard Library Director Margaret Barnes; Sally Mills Water Quality Program Coordinator; Marilee Davies, a teacher with the Durham Elementary School in the Tigard-Tualatin School District; and Tom Vanderplatt Water Resources Manager for Clean Water Services, recently completed the third trip of a Tigard delegation to Indonesia. Tom and Sally traveled to Samarinda and Balipapan and worked with local officials on water auditing and quality monitoring. Both cities have made substantial progress with their pilot water audit programs. In addition, Marilee and Margaret presented lesson plans and curriculum related to the conservation of water and protection of the environment. The lesson plans were presented to teachers and actually used in classrooms at schools in both cities. The lesson plans were developed by Marilee and Jo Barndse, another teacher with the Tigard-Tualatin School District. A delegation from the two cities is currently scheduled to come to Tigard September 24-30, 2005. Margaret and Tom will make a presentation regarding the program and their trip and answer any questions.

OTHER ALTERNATIVES CONSIDERED

Not applicable.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

N/A

ATTACHMENT LIST

Powerpoint presentation

FISCAL NOTES

Costs for this program are paid by USAID

Balikpapan & Samarinda
INDONESIA

ICMA Exchange Program
August 2005

DELEGATES

Margaret Barnes
City of Tigard

Marilee Davies
Tigard-Tualatin School District

Sally Mills
City of Tigard

Tom Vander Platt
Clean Water Services

Destination Indonesia

Samarinda ~
A Warm Welcome

Samarinda ~
Greetings from Tigard

Water Exchange

Samarinda ~ Discussion of Progress

Samarinda ~ Embung Complex

Samarinda ~ Water Audit Program

Samarinda – Embung Intake Site

Samarinda ~ Embung Intake Facility

Balikpapan ~ Water Presentations

Balikpapan ~ Questions & Answers

Balikpapan ~ Kampung Water Audit

Balikpapan ~ Manggar Reservoir

Balikpapan ~ Manggar Dam Raise

A Job Well Done!

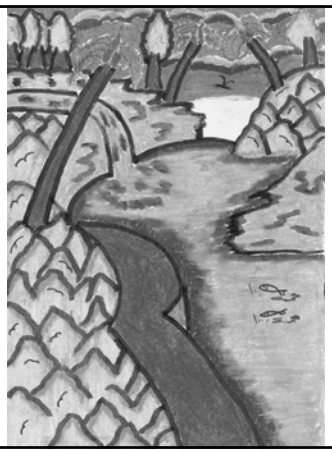
Canopy Tour

Greetings from Bukit Bangkirai

Supporting Ecological Preservation

A View To Appreciate

Education Exchange



SAVE THE WATER
SAVE THE WATER

CERDAS

AGENDA ITEM # _____
FOR AGENDA OF September 13, 2005

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Mountain View Estates Subdivision Annexation (ZCA2004-00004)/ Arlington Heights 3 Subdivision Annexation (ZCA2005-00001)/Wilson Ridge Subdivision Annexation (ZCA2005-00002)/Alberta Rider/Summit Ridge Subdivision Annexation (ZCA2005-00003)

PREPARED BY: Dick Bewersdorff DEPT HEAD OK CITY MGR OK

ISSUE BEFORE THE COUNCIL

Should the City Council approve the proposed annexation requests?

STAFF RECOMMENDATION

Adopt the four attached Ordinances approving the annexation requests.

INFORMATION SUMMARY

City Council held a public hearing on these four annexation requests on August 9, 2005. Prior to the hearing, staff provided Council with supplemental findings demonstrating compliance with ORS Chapter 222, and excluding Ms. Alberta Rider's life tenancy area from the annexation since consent to the annexation had not been obtained from her. Staff revised the map and legal description to reflect this change. During the hearing, a number of residents provided testimony, and two of the applicants (for Wilson Ridge and Arlington Heights 3) spoke in support of the annexation requests. Several individuals requested that the record remain open for 7 days to allow submittal of additional written comments. Upon direction from the City Attorney, the Council closed the public hearing portion and held the record open for written comments until August 16, 2005 at 5:00. Twelve individuals submitted comments during that period as shown in ATTACHMENT 1. Staff also provided written responses to the questions raised as shown in ATTACHMENT 2.

The City Attorney prepared legal findings to respond to the comments that were raised during the August 9th hearing, and these have been included with each annexation package, ATTACHMENTS 3 through 6.

On August 23, 2005, the City Council moved to continue consideration as a result of a request by Julie Russell to hold the record open in order to respond to the staff and City Attorney responses to testimony at the August 9, 2005 Council Meeting. The record was held open until August 30, 2005 at 5:00 pm. The Council's motion was to accept written testimony limited to only new information presented in the staff and City Attorney responses. Two emails were received prior to the deadline (ATTACHMENT 7).

All four annexations represented here comprise 63 parcels totaling 46.15 acres. As indicated in the staff report to City Council, the proposed annexations meet the applicable standards. Pursuant to Chapter 18.320.020.C of the Tigard Development Code, the Comprehensive Plan designation and the City's zoning is automatically applied to property upon approval of the annexation by Council.

OTHER ALTERNATIVES CONSIDERED

Deny the annexation request, approve annexation of only some of the parcels, or include additional "island" parcels into the annexation proposal.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Growth and Management Goal #2: Urban Services are provided to all citizens within Tigard's urban growth boundary and recipients of services pay their share.

ATTACHMENT LIST

1. **Testimony Received After Close of the Public Record During 7-day Written Comment Period**
   1. Email from Mark Padgett, received August 16, 2005.
   2. Fax from Sean Foushee, applicant for Mt. View Estates, received August 15, 2005
   3. Letter from Alpha Community Development, applicant for Wilson Ridge, received August 16, 2005
   4. Letter from Tom Weber, applicant for Arlington Heights 3, received August 16, 2005
   5. Email from Julie Russell, received August 16, 2005
   6. Letter from LaVelle and Marie Day, received August 16, 2005
   7. Email from Jackie and Gary Kisling, received August 16, 2005
   8. Letter from Henry Kane, received August 16, 2005
   9. Email from Jim Wolf, dated 8/16/05
   10. Email from Bill Dickinson, dated 8/16/05
   11. Email from Lisa Hamilton-Treick, dated 8/16/05
   12. Email from Phil Decker, dated 8/16/05

2. **Response from Staff to Questions Raised During 8/9/05 Hearing.**

3. **ZCA 2004-00004 (Mountain View Estates Annexation Package)**
   Staff Report to the City Council
   Supplemental Finding Concerning Compliance with ORS Chapter 222
   Findings in Response to Comments
   "Draft" City Council Ordinance
   Exhibit A: Legal Description
   Exhibit B: Tax Map
   Exhibit C: Vicinity Map

4. **ZCA 2005-00001 (Arlington Heights 3 Annexation Package)**
   Staff Report to the City Council
   Supplemental Finding Concerning Compliance with ORS Chapter 222
   Findings in Response to Comments
   "Draft" City Council Ordinance
   Exhibit A: Legal Description
   Exhibit B: Tax Map
   Exhibit C: Vicinity Map

5. **ZCA 2005-00002 (Wilson Ridge Annexation Package)**
   Staff Report to the City Council
   Supplemental Finding Concerning Compliance with ORS Chapter 222
   Findings in Response to Comments
   "Draft" City Council Ordinance
   Exhibit A: Legal Description
   Exhibit B: Tax Map
   Exhibit C: Vicinity Map

6. **ZCA 2005-00003 (Alberta Rider Summit Ridge Annexation Package)**
   Staff Report to the City Council
   Supplemental Finding Concerning Compliance with ORS Chapter 222
   Findings in Response to Comments
   "Draft" City Council Ordinance
   Exhibit A: REVISED Legal Description (Excluding Ms. Alberta Rider's Life Tenancy Area)
   Exhibit B: REVISED Tax Map (Excluding Ms. Alberta Rider's Life Tenancy Area)
   Exhibit C: Vicinity Map

7. **Testimony Received After Close of the Public Record on August 23rd During 7-day Written Comment Period**
   1. Email from Julie Russell and attachment from Stephen Poage, received August 30, 2005
   2. Email from Julie Russell and attachment from Stephen Poage, received August 30, 2005

FISCAL NOTES

There is no direct fiscal impact resulting from annexing the properties. Costs associated with provision of city services will be offset by the collection of SDC's at time of development.

ATTACHMENT I

ZCA2004-00004 Mountain View Estates Annexation
ZCA2005-00001 Arlington Heights 3 Annexation
ZCA2005-00002 Wilson Ridge Annexation
ZCA2005-00003 Alberta Rider/Summit Ridge Annexation

Testimony Received After Close of the Public Record
During 7-day Written Comment Period
Deadline for Additional Written Testimony: 5:00 p.m., August 16, 2005

1. Email from Mark Padgett, received August 16, 2005.
2. Fax from Sean Foushee, applicant for Mt. View Estates, received August 15, 2005.
3. Letter from Alpha Community Development, applicant for Wilson Ridge, received August 16, 2005.
4. Letter from Tom Weber, applicant for Arlington Heights 3, received August 16, 2005.
5. Email from Julie Russell, received August 16, 2005
6. Letter from LaVelle and Marie Day, received August 16, 2005
7. Email from Jackie and Gary Kisling, received August 16, 2005
8. Letter from Henry Kane, received August 16, 2005
9. Email from Jim Wolf, dated 8/16/05
10. Email from Bill Dickinson, dated 8/16/05
11. Email from Lisa Hamilton-Treick, dated 8/16/05
12. Email from Phil Decker, dated 8/16/05

From: "Mark Padgett" <mark@padgett.net>
To: <cathy@ci.tigard.or.us>
Date: 8/16/2005 9:08:50 AM
Subject: from Mark Padgett re: annexation

Cathy - please add this email to the written record that was held open until today (Aug. 16, 2005). Thank you.

Councilors - as I have listened to the people from the unincorporated area of Bull Mountain testify, one underlying theme has been running through their statements. They seem to think that you have the same level of obligation to represent their wishes as you do for City of Tigard residents. This is just not the case. We all know that the annexation issue is really one of taxing equity for the people of our city. Allowing even more property to develop outside the City when the property will be occupied by more people who will be using most of the City's resources at the same level of City residents is just not in the best interests of our residents and adds to this taxing inequity.

Perhaps the best illustration of this came in the testimony of one Bull Mountain resident (as quoted in last week's Tigard Times) that he is "already using the Tigard library and parks". This is exactly the point.

I implore you to first and foremost keep in mind the best interests of the citizens of Tigard. You are not an elected body from anywhere else. If the Bull Mountain residents want you to represent their interests at the same level of those of Tigard residents, then they should annex. Until then, let them find their recourse from their chosen government, the Board of County Commissioners. That's their choice.

I must tell you I certainly am not the only citizen of Tigard who would resent subsidizing the eventual residents of even more property. I hope you agree with me that you should annex this property and all other property that presents itself in the same manner.

Let's do what's best for the citizens you truly represent.

Please note I am writing this as a private citizen and not as a representative of the Planning Commission.

Thank you.
Mark Padgett
voice 503.590.5226
fax 503.590.5227
cell 503.997.MARK
email mark@padgett.net

2

ACCENT RESIDENTIAL HOMES
12583 SW AUTUMNVIEW ST.
TIGARD OR 97224
(503) 670-4939
FAX (503) 670-4938

FACSIMILE TRANSMITTAL SHEET

TO: Morgan Tracy	FROM: Accent Residential Homes
COMPANY: City of Tigard	DATE: 8/15/05
FAX NUMBER: 503-684-7297	TOTAL NO. OF PAGES INCLUDING COVER: 2
PHONE NUMBER:	SENDER'S REFERENCE NUMBER: 503-670-4939
RE: Voluntary Annexation – Mt. View Estates	YOUR REFERENCE NUMBER:

☐ URGENT ☐ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

Please let me know if you require anything further from us~

Thank you,

Angel Sully
Accent Residential Homes, Inc.
503-670-4939
503-914-9482 cell

2

ACCENT
RESIDENTIAL HOMES

August 15, 2005

Morgan Tracy
Associate Planner
City of Tigard
13125 SW Hall Blvd.
Tigard OR 97223

Mr. Tracy:

Accent Residential Homes is voluntarily annexing the property at 12415 SW Beef Bend Rd, the Mountain View Estates development, into the city of Tigard.

Sincerely,

Sean Foushee
President
Accent Residential Homes, Inc.

alpha
COMMUNITY DEVELOPMENT

August 15, 2005

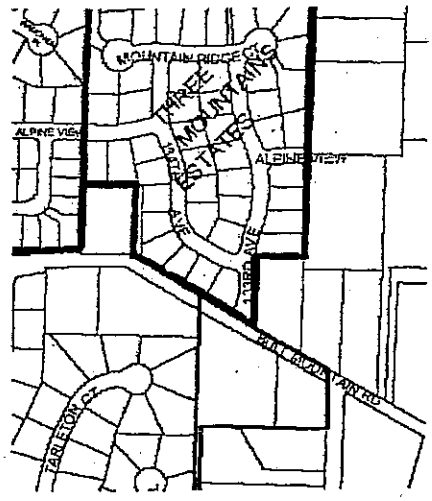
RECEIVED PLANNING
AUG 16 2005
CITY OF TIGARD

Morgan Tracy, Associate Planner
City of Tigard
13125 Hall Blvd.
Tigard, OR 97223

Re: ZCA 2005-00002
ORD 05-11

Dear Mr. Tracy,

Pursuant to the comments raised at the August 9, 2005 meeting of Tigard City Council, please note the following with regard to the proposed annexation of the Wilson Ridge subdivision:



- It is the applicant's assertion, which can be readily verified by the map at right, that the proposed annexation of the Wilson Ridge subdivision does not create an "island" or irregular City boundary. Instead, the proposed annexation is effectively a southerly extension of City limits formed by the Three Mountains Estates subdivision located due north across SW Bull Mountain Road. Additionally, the Tigard Police Department has reviewed the proposal without objection, and has not made any comment with regard to difficulty of service delivery or confusion of response.

- With regard to citizens' testimony suggesting that consent to annex was coerced in some fashion; we would like to state for the record, as we testified before Council, that there was no pressure whatsoever to consent and that it is our wish that the subdivision be located within City limits.

- Lisa Hamilton's testimony included reference to a request or deal in principle to remove the "panhandle" portion of the site from annexation. Alpha Community Development wishes to make clear that the portion of land in question is part of the southwesternmost lot and not a right-of-way or easement. Further, we have no knowledge of such a deal or discussions to that effect with Washington County or City of Tigard officials, or any other such body.

www.alphacommunity.com

Plaza West, Suite 230, 9600 SW Oak, Portland, Oregon 97223
[T] 503-452-8003 [F] 503-452-8043

- In her testimony, Ms. Hamilton also questioned the density of the proposed 14-lot Wilson Ridge subdivision, stating that it may be incompatible with neighboring properties/developments in that it is too dense. Please note that as applicant, Alpha Community Development designed the subdivision to comply with City of Tigard R-7 zoning, which governs this site within the Urban Service Area. Even if Washington County R-6 (6 units/acre) zoning had been in effect, the resulting subdivision would have contained the same number of lots/units. Density calculations are as follows:

City of Tigard R-7		Washington County R-6	
gross area	116,630 sq. ft.	gross area	116,630 sq. ft.
– right of way	31,824 sq. ft.		= 2.68 acre
– private street	6,758 sq. ft.		x 6 units
= net area	78,105 sq. ft.		= 16 lots
	/ 5,000 sq. ft.		
	= 15 lots max.		
	x 0.80		
	= 12 lots min.		

Being that Section 300-2.1 of the Washington County code states that "Site size shall include the area of the subject lot(s) or parcel(s), in acres or portions thereof, excluding all areas ***currently*** dedicated for public right-of-way," R-6 density is calculated from the gross site, not the net. Therefore, it is the applicant's assertion that the density of the subdivision proposed under Tigard zoning is similar to that under Washington County, if not less.

Thank you for your attention to this application and our written comments. Please do not hesitate to contact either project manager, Jeff Vanderdasson, or me at (503) 452-8003 with any questions or concerns.

Sincerely,
ALPHA COMMUNITY DEVELOPMENT

John Marquart
Staff II Planner

cc: Al Jeck, *Alpha Community Development*

TERRA-WEBER, LLC

Property Development

RECEIVED
AUG 16 2005
CITY OF TIGARD
PLANNING/ENGINEERING

August 15, 2005

Tigard City Council
Tigard City Hall
13125 SW Hall Blvd
Tigard, OR 97223

Re: Zone Change/Annexation (ZCA) 2005-00001

Dear Councilors,

We are the Owner/Developers of Arlington Heights No. 3 that is being considered for annexation into the City of Tigard. It was decided at the public hearing held on August 9, to keep the record open for 7-days in order to receive additional information. To that end I would like to offer the following points.

1. We own the Property in question and it is our desire to be annexed to the City of Tigard.
2. Whether the City requires annexation or not I choose to be annexed in order to receive the benefits of being a resident of the City.
3. We have not been coerced by the City to annex. We are involved in other projects that are not contiguous to the City limits but if they did qualify I would voluntarily annex.
4. I believe the City has every right to require annexation if City services are extended to accommodate development. This is an accepted practice in other jurisdictions.
5. The "Friends of Bull Mountain" do not represent me or anyone I know. They seem to demand all of the benefits from the City but don't want to pay the bill. That hardly seems fair and in fact I believe that anyone who is not a resident of the City does not have a standing in these proceedings.

Again, as the Owners of the subject Property I urge you to approve this annexation request without delay.

Very truly yours,

Tom Weber
Terra-Weber, LLC

12755 SW 69th Ave., Suite 100, Portland, OR 97223 • Office: 503.517.8284 • Fax: 503.601.3524

5

council mail councilmail - Annexation Testimony

From: "Julie Russell" <jarussell59@comcast.net>
To: <cathy@ci.tigard.or.us>, "Craig Dirksen" <craigd@ci.tigard.or.us>, "Nick Wilson" <nickw@ci.tigard.or.us>, "Sydney Sherwood" <sydney@ci.tigard.or.us>, "Tom Woodruff" <tomw@ci.tigard.or.us>
Date: 8/16/2005 11:58 AM
Subject: Annexation Testimony

Dear Cathy,

Please submit my written testimony regarding the annexation of the four properties on the agenda last week. My testimony is attached.

Best Regards,

Julie Russell

August 16, 2005

Julie Russell
12662 SW Terraview Dr
Tigard, OR 97224

Dear Mayor and Council Members,

I am submitting my written testimony to oppose the annexation of the four properties (Mountain View Estates, Arlington Heights 3, Wilson Ridge and Alberta Rider/ Summit Ridge.) I testified against this annexation on August 9, 2005 and request that my written testimony be made part of the public record.

I would have hoped that the council would have considered the defeat of the Bull Mountain annexation vote in Nov. of 2004. Where 89% of the residents of the mountain clearly stated that they did not want to be annexed to Tigard.

It is quite clear from your aggressive strategy that Tigard intends to proceed by forcing builders to annex by denying building permits, unless they agree to annex. It is also quite clear that you intend to create irregular boundaries and islands, thus taking away property owner's right to vote on annexation decisions. This is abusive and bad public policy. The Oregon legislature did pass some laws this session to change annexation policy. HB 2484 guarantees a dual majority vote, and SB 887 prevents island annexation for at least two years. I think Tigard needs to be careful to follow the intent of these laws that have been passed and will continue to be passed to protect the rights of residents to choose whom will govern them.

I disagree with Tigard's assumption in the Comprehensive Plan Policy 2.1.1. The city shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process. Tigard doesn't have or recognize any Neighborhood Planning Organizations in the unincorporated area, (Urban Service Area), and Tigard has admitted they do not recognize CPO4B. CPO4B is the Citizen Participation Organization for Bull Mountain and parts of Tigard. Tigard has openly stated they will not send city staff to CPO4B meetings and do not acknowledge the CPOs as they are organized by Washington County. As a result, unincorporated Bull Mountain residents have no recognition in community organizations in the city. Tigard limits the involvement of unincorporated Bull Mountain residents on committees in Tigard, and refuses to appoint those residents to various committees, such as the budget committee. I believe this violates the policy. Also Tigard does not involve citizens in the pre-application meetings, unlike Lake Oswego. Tigard did not notify every property owner in Arlington Heights 1 and 2 regarding this hearing. Those property owners could be affected if this annexation passes, as they will become an island, and could be annexed without a vote.

I dispute Tigard's findings in Policy 10.1.2. Tigard admits that none of these annexations eliminate an existing "pocket" or "island" of unincorporated territory. Tigard states that these annexations will not create an irregular boundry. This proposed annexation will definitely create irregular boundaries and difficulties for service providers to know if the property is inside or outside of city limits. The Alberta Rider/Summit Ridge proposal states that it is addressing a situation where parcels fall in and outside of city limits.

Their formation is the result of disjointed annexation and plat approval timing. This was due to the annexation in Dec. 2004 that again created irregular, inconsistent boundaries. The Tigard Code 10.1.2 specially states the requirement a. The annexation eliminates an existing "pocket" or "island" of unincorporated territory, or b. The annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside of city limits. These four annexations do not comply with either of these requirements. The Washington County Sheriff's Department did not have the opportunity to comment on these annexation requests and the affect on the service of the area, and the affect of the withdrawal of those properties from the Enhanced Sheriff's Patrol District.

I dispute CDC Section 18.320.020. This area has been identified as severely park deficient by Washington County in the Bull Mountain Community Plan in 1983, and the City of Tigard. There are no solutions for sufficient capacity to remedy the lack of parks. Annexation to Tigard, by allowing additional homes with no identified parks or open space only increases this deficiency. Tigard has a goal of providing 11 acres of parkland per 1,000 residents, but currently only has 8 acres per 1,000 residents. These annexations only create more of a park deficiency for Tigard. I also dispute the fact that the roads and transportation plan can handle the additional capacity created by these subdivisions. Bull Mountain Road and Beef Bend Road are the only access points to Hwy 99, which is at or near capacity at every intersection through Tigard per ODOT. Additional building permits only make the already overloaded Highway 99 worse. These subdivisions also give access to collectors and aterials of Beef Bend Road and Bull Mountain Road, which the Washington County code and transportation plans say few access points should be granted.

I dispute the timing and assignments of the zoning designations as they completely ignore the Bull Mountain Community Plan zoning, which still identifies the slopes and summit as being low density, not medium density, and the zoning per the Bull Mountain Community Plan is still R-6, or 6 lots per acre not 7. The assignment of these designations shall occur automatically and concurrently with the annexation. So why was Summit Ridge allowed to build at R-7 designations, when it was not annexed to Tigard and still under Washington County zoning of R-6?

I dispute the fact that all residents were notified of the proposal to annex parts of Bull Mountain Road and Beef Bend Road. This is not clear on the vicinity map. Which roads or parts of roads are actually being annexed? Who was notified? All surrounding residents and affected property owners? When did parts of Bull Mountain Road and Beef Bend Road become city streets? The Washington County Transportation Plan still identifies them as county streets. I do not know of any residents or Citizen Participation Organizations being advised that any roads in the area have experienced a change in jurisdiction.

What about the residents east of SW 133rd? This could create an island for all of those property owners. What comments were received by the Washington County Sheriff's department and other service providers, about these irregular boundaries and islands?

Who will service those areas, and how will this confusing patchwork of boundaries be serviced?

I dispute Metro 3.09 conclusions. The proposed annexation will interfere with the timely, orderly and economic provisions of public facilities and services. Public facilities and services are provided by various service districts and do not require annexation in order to continue those services.

I oppose the annexation file of Alberta Rider/Summit Ridge Annexation. Alberta Rider is a public school and should not be required to annex to Tigard prior to receiving a final building permit. I believe again this is very bad public policy and quite probably illegal. The only thing to be gained by requiring Alberta Rider Elementary School to annex is the surrounding of neighboring property, and the creation of islands to continue the aggressive annexation policy of Tigard. Also the property owner Alberta Rider did not consent to annex to Tigard. Alberta Rider and Summit Ridge should not be processed in the same annexation, one is owned by the Tigard/Tualatin School District and the other is a private developer.

I oppose the Summit Ridge annexation, as Arbor Summit and Summit Ridge were not bordering city limits, when they were annexed in Dec. of 2004. I also dispute the statement that a double majority method was used for one of the parcels of Summit Ridge, Venture Properties is not an elector in the area, but simply the developer, so how did that election take place, and how can the future residents be held accountable to this hostile annexation?

I disagree with the statement that some of the property in Arbor Summit and Summit Ridge were inside the city and some outside of the city. None of this property was inside of the city prior to the development of the property and annexation in Dec. 2004.

I oppose the annexation of the Arlington Heights 3 subdivision on the grounds that they are annexing to the Arlington Heights Homeowners Association and are part of the Arlington Heights Neighborhood. Arlington Heights 1 and 2 are not annexed to Tigard and were approved under county land use regulations in 1997. I don't believe Tigard can legally annex only one portion of a subdivision.

Respectfully,

Julie Russell

6

RECEIVED C.O.T.
AUG 16 2005
Administration
1:07 pm
Dw

August 15, 2005

City Council
Tigard, Oregon

Re: Annexation of approximately 47 acres on Bull Mountain

Dear Mayor Dirksen and City Council Members,

We understand that the record is being held open until August 16, 2005. We are submitting these comments and request that they be made a part of the public record on this matter.

It is very obvious that the City of Tigard is trying to strategically annex land in a manner to prevent the citizens of unincorporated Bull Mountain from considering annexation to King City as an alternative to annexing to Tigard. This would also cause problems for considering the option of incorporating as a new city.

It is still the same of pressure tactics that Tigard has used during the past number of years and it is very tiring. However, it has made us absolutely more determined to help the Friends of Bull Mountain to challenge this and any other tactic that the City of Tigard comes up with to hamper an orderly, considered approach to what would be best for the unincorporated area of Bull Mountain.

We think it is unconscionable that the City of Tigard has put such great pressure on developers to get their testimony in support of the annexation. From the developer who testified, his testimony stated the following facts:

1. That the developer has several projects going on in Tigard.

2. That his Bull Mountain project is being held up because of this annexation proposal. He stated that he hoped a decision would not be delayed, otherwise he would "lose the current season".

3. That he lived in an apartment in Tigard, not a condo or town house or separate home. That suggests that it is not a permanent arrangement, even though he can say with all sincerity that he is a resident of Tigard. As a developer with multiple projects going on in the City of Tigard that doesn't fit the normal developer's life style.

Within the scope of discretion that the City of Tigard can legally enforce when working with developers, this developer's life could be made "much easier", if he sides with the City. If he were to object or to remain neutral, his life could be made "hellish". Can anyone prove these statements? The answer is no! But it fits the pattern of the city with this proposed annexation, with the one vote group position of the City on the previous election (until public pressure caused a change), with the required signing of statements requiring an unincorporated residents

to sign to get services, which state they will not contest annexation and with other such tactics exercised by the City.

An understanding person could ask the question, "What other position could this developer take than to support this annexation?" The answer is simple, "NONE". The city has forced him into this position. We find it difficult to believe that he would willingly on his own initiative ask to be annexed to the city with it costing him considerable delay and money. He is already concerned about "losing the season". He is a business man. He wouldn't make that kind of decision. The city has forced him into this position.

Without the developer's support, you have no annexation.

Annexation was turned down by the voters, which we support. We are opposed to this annexation and intend to pursue every legal means to stop it. Unfortunately this developer is caught in the middle and will be hurt the most. It is unfortunate that the City has placed him in this position.

LaVelle Day

Marie Day

LaVelle & Marie Day
14055 SW High Tor Dr
Tigard, OR 97224

7

council mail councilmail - Bull Mountain Annexation

From: "Jackie & Gary Kisling Home" <garykisling@comcast.net>
To: <craigd@ci.tigard.or.us>
Date: 8/16/2005 3:52 PM
Subject: Bull Mountain Annexation

Mayor Dirksen and Council Members,

We wish to oppose the annexation of the four properties designated by the Tigard City Council, as well as all other remaining unincorporated properties on Bull Mountain that were not designated.

We live in Mountain Gate. We voted against annexation in Nov. of 2004. You should remember that 90% of the voters said "No."

This was followed by HB2484 and HB2722. These laws are to protect the residents of the affected properties.

Your approach has been and continues to be that of a hostile takeover. We know that Tigard has a big budget problem that would be resolved by higher taxes imposed on unincorporated Bull Mountain residents. Your approach continues to be aggressive and without respect for the wishes and legal rights of the residents.

You hold a very important position in city government. You should be a good listener, a skilled long range planner, and have the ability and know-how to negotiate for a compromise that leaves all sides committed. If you can't think of any way to negotiate a compromise with Bull Mountain residents ... you need help from those of us in unincorporated Bull Mountain!

Jackie & Gary Kisling
14485 SW Peachtree Dr.
Tigard, OR 97224
503-590-5753

8

RECEIVED C.O.T.

AUG 16 2005

Administration

4:38 pm

Henry Kane
12077 SW Camden Lane
Beaverton, Oregon 97008
503.643-4054

HAND-DELIVERED

August 16, 2005

Mayor and Councilors
Tigard City Council
13125 SW Hall Blvd.
Tigard, OR 97223

Re: Objection to forced annexation of unincorporated territory in reliance on forced annexation provision of ORS 222.750 on ground forced annexation violates Oregon Constitution, Article II, §§ 1 and 2

Mayor Dirksen and Councilors:

Attached to this letter are pages 11-15 of a Court of Appeals brief stating in substance that the Oregon Constitution forbids the legislature to enact a law purporting to forbid a qualified voter to vote.

In addition to the cases cited in the attachment, see Livesley v. Litchfield, 47 Or 248-49, 88 Pacific142, headnote 3 (I905):

> "3. The provisions of Salem charter * * * prohibiting any person from voting at any election of said city who has not paid a road poll tax for the year in which he offers to vote, unless exempt as otherwise in said charter provided, is void as in conflict with Const. Or. Art. II, § 2, prescribing the qualifications of electors at all elections not otherwise provided by said constitution." (emphasis added)

ORS 222.750 "island annexations" without allowing residents and property owners to vote on whether they wish to be annexed also violates the Equal Protection of the Laws and Due Process of Law Clauses of the Fourteenth Amendment to the U.S. Constitution.

Please consider this letter formal notice that if the City of Tigard attempts to annex unincorporated territory in reliance on ORS 222.750 without allowing a vote, the undersigned will offer oral and written testimony opposing forced annexation, and **will appeal a forced annexation order to the Land Use Court of Appeals.**

Henry Kane
Encl.

(no paragraph)

> We emphasize again what Chief Justice Waite said in *Munn v. Illinois*, 94 U. S. 113, 134, 'For protection against abuses by legislatures the people must resort to the polls, not to the courts.'" (emphasis added)

Neither the Board nor the city has cited any appellate court decision rejecting a constitutional challenge to a right to vote statute with a holding stating in substance that "the people must resort to the polls, not to the courts." *Id.*

There is a fundamental distinction between the constitutional right to vote and the right to engage in a calling or profession.

Restrictions or denial of the right to vote is subject to strict scrutiny.

In contrast, casenotes 1-2 of Meadows v. Odom, 360 F.Supp.2d 811 (M.D.La. 2005) held:

> "1. The right to pursue the 'common occupations of life' is a protected liberty interest, subject to reasonable limitations."
>
> "2. State legislatures may choose which industries, professions, or occupations require regulation and to what degree they should be regulated within each industry, profession, or occupation, without violating the Equal Protection Clause." (emphasis added)

FIFTH ASSIGNMENT OF ERROR

Respondent's denial of the right to vote in reliance on ORS 222.750 violates sections 1 and 2 of Article II of the Oregon Constitution.

Argument

Preservation of Error

Respondent's adherence to the state and federal constitution in the appeal at bar is jurisdictional, hence a constitutional issue may be raised for the first time on appeal.

Respondent forcibly annexed the unincorporated territories at issue without allowing residents and property owners to vote on whether they supported annexation, in reliance on the following "without the consent" option of ORS 222.750:

> " * * * annexation by a city under this section shall be by ordinance or resolution, subject to referendum, with or without the consent of any owner of property within the territory or resident in the territory." (emphasis added)

Oregon Constitution, Article II, section 1, provides:

> "All elections shall be free and equal."

Oregon Constitution, Article II, section 2 provides in relevant part:

> "(1) Every citizen of the United States is entitled to vote in all elections not otherwise provided for by this Constitution if such citizen:
>
> "(a) Is 18 years of age or older;
> "(b) Has resided in this state during the six months immediately preceding the election * * * and;
>
> "(c) Is registered not less than 20 calendar days immediately preceding any election in the manner provided by law.
>
> "(2) Except as otherwise provided in section 6, Article VIII of this Constitution with respect to the qualifications of voters in all school district elections, provision may be made by law to require that persons who vote upon questions of levying special taxes or issuing public bonds shall be taxpayers." (emphasis added)

State v. Campbell/Campf/Collins, 265 Or 82, 88, 506 P2d 773, 314 P2d 912 (1973) cited with approval an earlier election law case for the following rule:

> "'Such legislation, however, must be reasonable, not curtailing the right or placing any undue burden upon its exercise': * * *. Nor may it 'hamper or render ineffective the power reserved by the people': * * *.'" (emphasis added)

The Court held at 265 Or 88-89:

> However, not every legislative provision which tends to prevent fraud is necessarily valid. In *Woodward v.* Barbur, 59

Or 70, 116 P 101 (1911) and in *State ex rel Fleck v. Dalles City*, 72 Or 337, 3460347, 143 P 1127 (1914) it was held that municipal ordinances which restricted the right to sign petitions to registered voters were invalid because in conflict with the constitutional provision extending the right of initiative to the 'legal voters of municipalities.[3] * * *." (emphasis added)

The case note of State ex rel Chapman v. Appling, 220 Or 41, 348 P.2d 759 (1960) summarized the case:

* * * The Supreme Court, Lusk, J., held that the constitutional amendment providing that members of legislature shall receive for their services a salary of $600 per annum gives the legislature no power to enact statute increasing compensation for services to $175 per month."

The Court held at 220 Or 70:

"We hold, therefore, that ORS 171.071 is unconstitutional and void. * * *"

State ex rel Chapman, supra, held at 220 Or 50:

" * * * A provision of the charter of the City of Portland which prohibited a person from voting in a municipal election who has not paid a road poll tax was in conflict with Section 2 of Article II of the constitution of this state, which prescribes the qualifications of voters of this state. * * *

It will be observed that the qualifications of voters are in affirmative, mandatory terms. The court said:

"'The provision is by its terms expressly made applicable to all elections not otherwise provided by the constitution. * * *'"

Peterkort v. County Zoning District, 211 Or 188, 195, 313 P2d 773, 314 P2d 912 (1957) held:

" * * * Article II, § 2, is unambiguous and its meaning clear and not open to construction.

"Our conclusion is that ORS 215.269 is unconstitutional as in conflict with Art II, § 2, of the Oregon Constitution, the election held pursuant to that statute was void, and the

[3] "2 At the time these cases were decided, a citizen was not required to be registered in order to be a legal voter. Registration is now a constitutional requirement. * * *"
Section 2."

purported county zoning district has no validity. * * *"
(emphasis added)

Veatch v. Cottage Grove, 133 Or 144, 145, 289 P2d 494 (1930) held:

" * * * the legislature can not pass an act in contravention of the constitution. The language quoted from said section 2 is plain and simple, and the legislature is without the power to limit voters to taxpayers where the charter of the city is involved * * *"
(emphasis added)

The Court held at 133 Or 146 that the legislature, by statute, cannot "prevent non-taxpaying citizens from voting:"

"There is no pretense that the hundred non-taxpaying voters were disqualified in any other way than that they did not pay taxes. There is no claim that the election attacked in this action is 'otherwise provided for by this constitution."

(no paragraph)

Said article II, section 2, as amended says '*every* citizen of the United States.' That language is broad enough to include non-taxpaying citizens and the legislature has not the power to prevent non-taxpaying citizens from voting." (Emphasis by Court)

Loe v. Britting, 132 Or 572, 578, 287 P 74 (1930) held in rejecting denial to vote on a bond issue:

" * * *The right to vote in this case, conferred by the constitution, is a political right which attaches to every qualified voter seeking to cast his ballot at a general or special election and a statute which denies that right is unconstitutional because denying an existing right. * * *." (emphasis added)

The Court held that a statute limiting the right to vote on a bond issue in the bond issuing district is unconstitutional as denying the right to vote.

Ladd v. Holmes, 40 Or 167, 178, 66 P 714 (1901) held:

"Article II, § 1, provides that all elections shall be free and equal. To be free means that the voter shall be left in the untrammeled exercise, whether by civil or military authority, of his right and privilege; that is to say, no impediment or restraint of any character shall be imposed upon him, either directly or indirectly, whereby he shall be hindered or prevented from

participation at the polls * * *." (emphasis added)

The city's responsive brief may claim there is no Oregon constitutional right to vote on annexation. The record is silent on whether either appellate court considered Oregon Constitution, Article II, sections 1 and 2.

However, Oregon Constitution, Article II, §§ 1 and 2, prevail when there is a conflict between the right to vote in general and the city's claim of no Oregon constitutional right to vote on annexation.

Therefore, the Board erred in affirming constitutionality of ORS 222.750.

SIXTH ASSIGNMENT OF ERROR

The appealed LUBA Order must be remanded because Respondent's Comprehensive Plan lacks annexation criteria and Respondent did not rule on whether the annexation complied with Statewide Goals.

Argument

Preservation of Error

App 2. to this brief is page 2 of appellant Kane's December 17, 2005 post-hearing written testimony. It is identified as "00084" of Respondent's record submission to LUBA. The last paragraph of App. 2 preserves Respondent's error:

> "Beaverton violated (ORS) 197.175(1) because the city did not consider Land Use and Development (LCDC) statewide development goals."

Cape v. City of Beaverton, 187 Or App 463, 470, 683 P3d 261 (2003) held:

> "Reduced to its simplest terms, the fact that the city's plan does not address the annexation of this property means that, under OAR 660-001-0310, the annexation cannot be considered to be in compliance with the goals.
>
> (no paragraph)
>
> The result of that lack of compliance is that the annexation is subject to the goals." (emphasis added)

9

From: Jim Wolf
To: Morgan Tracy
Date: 8/16/2005 3:58:43 PM
Subject: Police Services For Proposed Annexation Areas

Morgan,

At this time, Tigard Police has adequate resources to provide police services to the areas that are being proposed for annexation into the City of Tigard. My information indicates the areas of discussion include Wilson Ridge, Mountain View Estates, Arlington Heights III and the Summit Ridge area including the Alberta Rider School.

If you need any further clarification or comments, please contact me.

Thank you.

Jim Wolf
Public Information Officer
Tigard Police Department
13125 SW Hall Blvd
Tigard OR 97223

503.718.2561 office/voice
503.795.2391 (pager)
503.718.2645 (fax)
503.519.6804(mobile)

CC: Bill Dickinson

10

From: Bill Dickinson
To: Morgan Tracy
Date: 8/16/2005 4:41:07 PM
Subject: annexation area

Morgan,

As a supplement to Jim Wolf's response to you, I would point out that annexation and full development of these properties not only would be of minimal impact to Tigard Police, the new residents would enjoy a staffing level which is higher than what they would receive if they were unincorporated area residents. The Tigard Police Department is much more impacted by current in-fill development inside the city limits than by this small annexation area. Hope this is helpful.

Bill Dickinson, Chief
Tigard PD

11

From: "Lisa Hamilton-Treick" <Lisa@HamiltonRealtyGroup.com>
To: "Cathy Wheatley" <CATHY@ci.tigard.or.us>
Date: 8/16/2005 4:55:44 PM
Subject: Written Testimony on Bull Mountain Annexations

Re: Annexation of Albert Rider Elementary School, Portions of Summit Ridge, Arlington Heights III, and Wilson Ridge

Please add the following written comments, along with the oral testimony of Lisa Hamilton-Treick on 8/9/2005, to the public record. We are commenting as public citizens and residents of unincorporated Washington County.

Mayor and Council Members,

We oppose the combined pubic hearing process for the above annexations as it causes undue hardship on residents who may wish to challenge the land use decisions under a LUBA appeal. It forces all four annexations to be addressed during the same 21 day deadline period and burdens the public with unnecessary expense. The decision to handle the public hearing for all four properties at the same time is acknowledged as "an experiment" by city staff.

We oppose the creation of highly irregular boundaries and intentional formation of "islands" and "pockets" of unincorporated neighborhoods. This process significantly contributes to a confusing service boundary, especially as it relates to the three local and overlapping police/sheriff's service boundaries. This is in direct violation of Tigard's annexation codes and ordinances. It is done so with the admitted plan to eventually fill in and align the boundaries, but with no process or timeline as to how and when that would, if ever, be accomplished.

We oppose the transfer of Traffic Impact Fees collected in the Urban Services Area (per 2002 IGA) to Tigard's TIF accounts. Per the Tigard/Washington County IGA, the funds collected in the area defined by the map are to be accounted for separated in the Urban Services TIF accounts.

We oppose the use of force to secure consent to annex in exchange for building permits. When negotiating the sale of their property, it is common practice for a buyer/builder/developer to require the seller to agree, as part of the purchase agreement, to sign any and all documents required by the city to allow the purchaser to proceed with the pre-application and application process. If, as part of that process, the City of Tigard requires the buyer/builder/developer to consent to annex in exchange for building permits, the city will jeopardize the sale unless the seller consents. If property owners were acting on their own free will it is highly likely the number of consents would be closer to 8% to 10%, reflecting the results of the November, 2004 election, rather than the 100% seller consent the city has stated.

Thank you for giving our comments your serious consideration.

Regards,

Tom Treick and Lisa Hamilton-Treick
13565 SW Beef Bend Rd.
Unincorporated Bull Mountain
Tigard, OR 97224

CC: <ttreick@comcast.net>

12

From: "phil decker" <pd-law@comcast.net>
To: "Tigard Mayor, City Council" <council@ci.tigard.or.us>
Date: 8/16/2005 4:37:27 PM
Subject: City Council Meeting, 8/9/05: Objection to Annexation of Four Parcels, and each of them

Hon. Mayor and Council Members:

I am Philip E. Decker and reside at 14540 SW 148th Place, Tigard, OR 97224.

This communication is to OPPOSE and OBJECT to the annexation to the parcels, and each of them individually (hereinafter collectively ' parcels'), identified in Item 7 of the Tigard City Council Meeting Agenda of August 9, 2005.

Grounds for said opposition and objection include, without limit, the following:

1. Both the City of Tigard and said parcels are regulated by and subject to ORS 222.111, et seq, as to annexation of real property to the City of Tigard;
2. Said parcels are not 'contiguous' as required by ORS 222.111, et seq.;
3. ORS 222.115 (Annexation contracts) is ensconced entirely within the statutory framework of ORS 222.111, et seq., which requires the parcel(s) be "contiguous to the city," and provides no exemption directly or indirectly to the overarching statutory requirement that parcels proposed for annexation be contiguous to the city;
4. The requirement by the City of Tigard that the parcel owner(s) or representative(s) consent in writing to annexation of said parcel(s) as a condition of issuance of necessary building and related permits by the City of Tigard is unlawful, unauthorized by applicable Oregon, impermissibly coercive, an abuse of the police power of the City of Tigard, a taking of property without due process of law and a conscious, intentional and unlawful attempt to create "de facto annexations" to the City of Tigard in order to avoid and circumvent Oregon laws applicable to annexations;
5. Each of the subject parcels is irregularly shaped; annexation of any of the subject parcels will create islands and pockets of annexed territory in violation of law, including without limit City of Tigard policy and ordinance;
6. The irregularly shaped parcels which are the subject of the instant annexation proposal, or some of them, are proposed for annexation to recently 'annexed' parcels which were themselves annexed in violation of law, including without limit City of Tigard policy and ordinance, by virtue of their irregular shapes and resulting creation of impermissible islands and pockets.

Thank you.

Philip E. Decker

Annexation Responses from Staff

In response to a number of questions that were raised at the August 9, 2005 City Council Hearing, staff has prepared the following responses. These are to be read in conjunction with the attached findings prepared by legal counsel.

Charles Radley

How appropriate are conditions of approval on development to require annexation?
The City Attorney has prepared findings that address this issue. See attached findings section numbers 4 and 5.

What is the nexus? Why does the landowner need to annex?
The City Attorney has prepared findings that address this issue. See attached findings section number 11.

Julie Russell

Why is this hearing being conducted differently?
There are 4 annexations being processed concurrently. Instead of sending four sets of notices to property owners resulting in duplication of some notices and some properties not being notified of the other annexation proposals, a combined notice and hearing process was instituted. This saved $132 in postage, resources in paper (382 notices versus 561), and staff time in preparing the notice.

As for the conduct of the hearing, there is no difference. The applications are introduced and summarized by staff, and opportunities to comment on one or all applications is offered. Council will take separate actions on each annexation proposal. The intention was to make it easier for citizens to participate in the process.

How does this affect the LUBA process?
It doesn't. The same appeal procedures apply for each of the four separate applications.

Concerns about the conditional use permit.
The conditional use permit was approved August 10, 2004 with a 10 day appeal period. The case was appealed by a private developer but the appeal was dropped before the hearing commenced. Therefore, the decision became legal and binding on August 24, 2004. Raising a claim of the validity of a condition at this time is invalid. The applicant has been aware of the requirement to annex since the preapplication conference was held for the school July 8, 2003. The school had numerous opportunities to challenge the requirement and chose not to. The standard practice is to require annexation prior

to commencing construction, but in the interest of facilitating the construction of the school, staff agreed to defer the annexation requirement until final building inspection.

Map seems incorrect. It shows Bull Mountain Road being annexed.
The vicinity map included with the notice is not the official annexation boundary map that is used to record the annexation. It is only intended to identify the affected parcels, and the generalized location of the proposed boundary change. This map is not sufficient to record an annexation with the Department of Revenue and other state and regional agencies. These agencies rely on tax assessor maps and legal descriptions, which are contained in each of the four annexation application files.

Portions of Bull Mountain Road will be annexed. Beef Bend Road will not be a part of these annexations.

Disputes findings of Comp Plan #2.1.1 – "that COT notified every property owner affected by the annexations..."
Policy 2.1.1 requires that: The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process.

The findings from the staff report state: "Interested parties and surrounding property owners within 500 feet have been notified of the public hearing and notice of the hearing has been published in a newspaper of general circulation. The site has been posted since June 23, 2005. There have been a number of opportunities for citizens to be involved in the decision making process, including the approval of the subdivision request."

The City Attorney has expounded on this issue in the attached findings, number 12.

Disputes findings of Policy 1.2- these annexations create irregular boundaries and create islands. Council in the past has said they would not annex to create islands.
We assume that it is policy 10.1.2 that is being disputed. This policy requires: "approval of proposed annexations of land by the City shall be based on findings with respect to the following: the annexation eliminates an existing "pocket" or "island" of unincorporated territory; or the annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the City; the police department has commented upon the annexation; the land is located within the Tigard urban planning area and is contiguous to the City boundary; the annexation can be accommodated by the services listed in 10.1.1(a)."

There is nothing in this policy that prevents the creation of islands, only that elimination of islands is encouraged. The council's statement regarding islands is misrepresented:

the City will not annex rights of way simply to create islands for later annexation. This is generally referred to as cherry stem annexations. That is not what is occurring here. There are distinct parcels being annexed and the rights of way that have been included are immediately fronting the annexed parcel. There is nothing to prevent Tigard from annexing up to the centerline of Beef Bend Road along Mountain View Estates and Arlington Heights 3, but to remain consistent with the previous annexation of Bella Vista, this right of way was excluded.

Any incremental annexation of parcels will have a boundary that is not "square" but that does not make them irregular. The annexation boundaries either incorporate the entire parcel (making police response easy to determine whether the parcel is within or outside the City) or excludes a particular address (as in the case of Mrs. Rider. Nevertheless, with the intergovernmental agreement for police services, both the county and the City will respond to incidents in the Bull Mountain area, depending on who is closest to the incident at the time.

The City Attorney has expounded on this issue in the attached findings, number 9.

Disputes 18.320.020. identified as a very park deficient area. More homes will increase the deficiency. Also, 99W is already at capacity – additional building will overload that.
The identified services are water, sewer, drainage, streets, police, and fire protection. Park deficiencies are not required to be considered with annexations. Also, 99W is not at capacity. Tigard's TSP shows that there are no roads at service levels of F (failing). It is projected that by 2015 without constructing certain mitigating facilities and improvements, portions of 99W will reach unacceptable levels of service. This is not the case now and a model projection cannot be used as a basis to reject an annexation request that roadway capacity is not (or someday will not be) available.

Was Washington County Sheriffs office notified? What are their comments?
All notices of annexation are sent to the Washington County Department of Land Use and Transportation. No comments were received.

Bull Mt. Community Plan identifies Bull Mountain area as R-6. How was Summit Ridge developed at R-7 prior to annexation?
Ordinance 487, adopted by the Washington County Board of Supervisors on September 9, 1996 applied the most equivalent zoning designation to the R-6 areas (not all parts of Bull Mountain are identified as R-6 in the plan). The R-7 zone is the most equivalent City designation per the table identified in the ordinance (and repeated in the Development Code section 18.320)

Why was Alberta Rider and Summit Ridge annexed together?

Unlike the other three annexation requests, these two annexations were initiated by the City utilizing consent forms. Since they are contiguous areas, the two were combined into one application. They could have been separated, but this would have served no purpose, other than making additional work (creating another casefile, generating another staff report).

How can Arlington Heights #3 annex into our homeowner's association and not have a double majority vote like the property owners who already live in that subdivision?

This is not a function of local government, and the procedure for adding lots into an HOA is an entirely separate process. The HOA is a private legal entity bound by the covenants that apply to the properties within a subdivision. Whether or not other lots can be added to an HOA and the process for doing such should be spelled out in the bylaws for the association.

Scott Miller

Why doesn't the City get the message about annexing Bull Mountain? Does the City of Tigard have a plan to continue to annex on Bull Mountain?

The City has had a long term policy that unincorporated areas within the City's area of interest (Bull Mountain, Metzger, etc.) should ultimately be served by the City. This was established with the adoption of Tigard's Comprehensive Plan in 1983 and acknowledged by Washington County through a series of intergovernmental agreements.

County 2000, Washington County's Strategic Plan, recognizes that cities are the best providers on municipal levels of urban services. County 2010, an update of County 2000, continues this policy direction.

Based upon the policy direction that has been in place since the adoption of the City's Comprehensive Plan, Tigard continues its policy of annexation. Annexation requests are received throughout the year.

In light of City and County policy, the City Council placed an annexation ballot on the November 2004 election. This ballot asked the voters of the City as well as voters of unincorporated Bull Mountain whether unincorporated Bull Mountain should be annexed into the City all at once. While the annexation of unincorporated Bull Mountain was not supported by 88.62% (4,199) of the voters in unincorporated Bull Mountain, a 64.71% (13,294) majority of Tigard voters supported the annexation. Tigard voters support annexation of unincorporated Bull Mountain.

What do any of us on Bull Mountain get for our tax dollars?

The Bull Mountain Annexation Plan, Bull Mountain Public Facilities and Services Assessment Report, and the Bull Mountain Annexation Study answer that question. Copies are available at the Tigard Public Library and on the City's web page – www.ci.tigard.or.us.

Bull Mountain does not have parks yet qualifies for one. Will the City of Tigard provide one?
Tigard's Parks Master Plan identifies existing and future park needs for the City's entire area of interest, including unincorporated Bull Mountain. The City is formalizing criteria for park purchases, including areas outside the current City limits. It should be noted that the City, along with Washington County, purchased approximately 12 acres outside the City limits for open space.

How can owners give consent unless no option?
The owners gave consent. The testimony by the owners was that consent was voluntary.

Lisa Hamilton-Treick

What is the City taking in? Wants to see current map of the unincorporated area of Bull Mountain including all of Bull Mountain and Beef Bend Road that demonstrate where the City's jurisdiction begins and ends.
The annexation boundaries are clearly shown in the tax assessor's maps which have been available in the application file since date of application. These maps are now available on line at
http://www.ci.tigard.or.us/city_hall/city_council/docs/packets/050809Packet.pdf

A minor adjustment in the proposed annexation area was introduced at the August 9th hearing to exclude Ms. Rider's life tenancy area. This map was made available at that hearing.

The City's GIS (Geographic Information System) coordinator position has been vacant since January and, as a result, the present zoning and comprehensive plan map has not been able to be updated and is out of date. As such, it does not reflect the recent annexation of Alpine View, Bella Vista, Arbor Summit, and portions of Summit Ridge. Updates to this map are scheduled to occur as soon as a new staff GIS person is hired.

Ken Henshel

Cannot find in any of the IGA's that gives City of Tigard authority to force governments on an area as a precondition to approving building or occupancy permits. These annexations are unconstitutional takings as they are coerced. The County and City IGA recognizes that Tigard is the ultimate service provider of urban services in the Bull Mountain Planning Area. As development of those parcels further intensifies the use and demand for those services, there is a rational nexus to require the properties to be included within the corporate limits of the City that provides and maintains those services. Since there is no physical "taking" of property, that is dedication of real property interests for public use that is required by bringing the property into the City limits, there is no requirement to determine rough proportionality of the condition requiring the annexation.

Agenda Item: 7
Hearing Date: August 9, 2005 7:30 PM

STAFF REPORT TO THE CITY COUNCIL FOR THE CITY OF TIGARD, OREGON

CITY OF TIGARD
Community Development
Shaping A Better Community

SECTION I. APPLICATION SUMMARY

FILE NAME: MOUNTAIN VIEW ESTATES ANNEXATION
CASE NO.: Zone Change Annexation (ZCA) ZCA2004-00004

AGENT: Lan Pacific
Attn: Brian Keefer
1001 SE Water Ave., #360
Portland, OR 97214

APPLICANT: Sean Foushee
Accent Homes
12583 SW Autumnview St
Tigard, OR 97223

OWNERS: Dwight C. and Karla Minthorne
12415 SW Beef Bend Road
Tigard, OR 97224

Richard and Diane M. Wright
15350 SW Beef Bend Rd
Tigard, OR 97224

PROPOSAL: The applicant applied for approval to subdivide property on Beef Bend Road, known as Mountain View Estates. The subdivision's approval included a condition of approval requiring annexation. The applicant has applied for annexation of 6.94 acres.

CURRENT ZONING DESIGNATION: R-7, Medium Density Residential.

EQUIVALENT CITY ZONING DESIGNATION: R-7, Medium Density Residential. The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of 10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.

LOCATION: 12415 SW Beef Bend Road, WCTM 2S110CB, Tax Lot 500.
No Site Address, WCTM 2S110CB, Tax Lot 100.

APPLICABLE REVIEW CRITERIA: Community Development Code Chapters 18.320 and 18.390; Comprehensive Plan Policies 2 and 10; Metro Code Chapter 3.09; and ORS Chapter 222.

SECTION II. STAFF RECOMMENDATION

Staff recommends that the Council find that the proposed annexation will not adversely affect the health, safety and welfare of the City. Therefore, staff recommends **APPROVAL** of the annexation by adoption of the attached ordinance.

SECTION III. BACKGROUND INFORMATION

Site Information and Proposal Description:
Lan Pacific, representing Accent Homes applied for approval to subdivide property on Beef Bend Road, known as Mountain View Estates. A condition of that subdivision approval required annexation prior to recording the final plat. Accordingly, the applicant applied for annexation of the two parcels that comprised the subdivision. The total area represented is 6.94 acres and is contiguous to the present city limits along the northern property boundary.

Vicinity Information:
The subject parcels are located north of SW Beef Bend Road, south of Thornwood subdivision, and west of Turnagain Heights.

SECTION IV. APPLICABLE REVIEW CRITERIA AND FINDINGS

The relevant criteria in this case are Tigard Comprehensive Plan Policies 2.1.1, 10.1.1, 10.1.2, and; Tigard Community Development Code Chapter 18.320.

Staff has determined that the proposal is consistent with the relevant policies of the Comprehensive Plan based on the following findings:

Comprehensive Plan
Policy 2.1.1: The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process.

This Policy requires an ongoing citizen involvement program. Interested parties and surrounding property owners within 500 feet have been notified of the public hearing and notice of the hearing has been published in a newspaper of general circulation. The site has been posted since June 23, 2005. There have been a number of opportunities for citizens to be involved in the decision making process, including the approval of the subdivision request.

Policy 10.1.1: The City shall review each of the following services as to adequate capacity, or such services to be made available, to serve the parcel if developed to the most intense use allowed, and will not significantly reduce the level of services available to developed and undeveloped land within the City of Tigard. The services are: water, sewer, drainage, streets, police, and fire protection.

This policy requires adequate service capacity delivery to annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. The subject parcels are part of a subdivision that was reviewed and approved based on the availability of public services. Services to the subject parcels have been addressed and conditioned within the review of the Mountain View Estates subdivision approval. This policy is satisfied.

If required by an adopted capital improvements program ordinance, the applicant shall sign and record with Washington County a nonremonstrance agreement regarding the following: The formation of a local improvement district (L.I.D.) for any of the following services that could be provided through such a district. The extension or improvement of the following: water, sewer, drainage and streets. The formation of a special district for any of the above services or the inclusion of the property into a special service district for any of the above services.

No L.I.D's were required for the subject parcels or subdivision approvals. All public infrastructure listed above have been conditioned to be constructed and the costs are to be borne by the applicant.

The City shall provide urban services to areas within the Tigard urban planning area or with the urban growth boundary upon annexation.

The City of Tigard has an urban services agreement with Washington County for those areas within the City's urban growth boundary. This policy has been complied with.

Policy 10.1.2: approval of proposed annexations of land by the city shall be based on findings with respect to the following: the annexation eliminates an existing "pocket" or "island" of unincorporated territory; or the annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the city; the police department has commented upon the annexation; the land is located within the Tigard urban planning area and is contiguous to the city boundary; the annexation can be accommodated by the services listed in 10.1.1(a).

This Policy pertains to boundary criteria for annexations. The proposed annexation will not eliminate an existing "pocket" or "island" of unincorporated territory; however the annexation will also not create an irregular boundary making it difficult for police to determine whether a particular parcel is in or outside the city. The proposed annexation will incorporate the entire subdivision boundary for Mountain View Estates. The police department has commented on the proposed annexation request and did not voice any objections. The land is within the Urban Services Area inside the Urban Growth Boundary and is bordered by the city limits on the northern side. Services to the subject property are addressed above. This policy is met.

Community Development Code
Section 18.320.020: This Section addresses approval standards for annexation proposals:

All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area;

Adequate service (water, sewer, drainage, streets, police, and fire protection) capacity is available to serve the annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. Additionally, the adequacy and availability of services was reviewed as part of the Mountain View Estates subdivision approval. Therefore, this policy is satisfied.

The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.

Applicable Comprehensive Plan policies have been addressed above. Ordinance provisions were addressed during the individual reviews of the Mountain View Estates subdivision. This standard has been met.

Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or/zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.

The subject property is in the Urban Service Area and is zoned R-7 medium density residential, pursuant to the City of Tigard's Urban Services Intergovernmental Agreement. The R-7 zoning designation is consistent with the original Washington County's R-6 zoning designation as shown in the table below. The City's zoning was adopted by the County with the City's R-7 zoning district. Therefore, the property does not need to be rezoned upon annexation. According to Section 18.320.020.C, the City's Comprehensive plan and zoning designations occur automatically and concurrently with the annexation.

Conversion table. Table 320.1 summarizes the conversion of the County's plan and zoning designations to City designations which are most similar.

TABLE 320.1
CONVERSION TABLE FOR COUNTY AND CITY PLAN AND ZONING DESIGNATIONS

Washington County Land Use Districts/Plan Designation	City of Tigard Zoning	City of Tigard Plan Designation
R-5 Res. 5 units/acre	R-4.5 SFR 7,500 sq. ft.	Low density 1-5 units/acre
R-6 Res. 6 units/acre	R-7 SFR 5,000 sq. ft.	Med. density 6-12 units/acre
R-9 Res. 9 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-12 Res. 12 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-15 Res. 15 units/acre	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
R-24 Res. 24 units/acres	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
Office Commercial	C-P Commercial Professional	CP Commercial Professional
NC Neighborhood Commercial	CN Neighborhood Commercial	CN Neighborhood Commercial
CBD Commercial Business District	CBD Commercial Business District	CBD Commercial Business District
GC General Commercial	CG General Commercial	CG General Commercial
IND Industrial	I-L Light Industrial	Light Industrial■

Metro

Metro 3.09 requires the additional standards to be addressed in annexation decisions, in addition to the local and state review standards. These are addressed and satisfied as discussed below:

Consistency with the directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;

The processing has been done consistent with applicable Urban Service Provider agreements.

Consistency with directly applicable provisions of urban planning or other agreement, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;

The process required by the Development Code and Comprehensive Plan is consistent with the Urban Planning Agreement for annexations.

Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;

This has been discussed previously in this report and, as discussed, this criterion is satisfied.

Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plans;

Because the Development Code has been amended to comply with applicable Metro functional plan requirements, by complying with the Development Code and Comprehensive Plan, the annexation is consistent with the applicable Functional Plan and the Regional Framework plan.

Whether the proposed changes will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;

The proposed annexation will not interfere with the provision of public facilities or services because it is adjacent to existing city limits and services, and the delivery of those services was anticipated as part of the urban services agreement which is intended to promote the timely, orderly, and economic delivery of public facilities and services.

If the proposed boundary change is for annexation of territory to Metro, a determination by Metro Council that the territory should be included in the Urban Growth Boundary shall be the primary criterion for approval;

The subject property is already within the Metro boundaries.

Consistency with other applicable criteria for the boundary change in question under state and local law.

Consistency with other applicable criteria has been discussed previously in this report.

SECTION V. AGENCY COMMENTS

Washington County Department Of Land Use & Transportation, Verizon, Qwest Communications, Northwest Natural Gas, Beaverton School District #48, Comcast Cable Corporation, Portland General Electric, Metro Area Communications, Cleanwater Services, Metro Land Use & Planning, Tualatin Hills Park & Rec. District, Tualatin Valley Water District, Tualatin Valley Fire & Rescue, and Tigard/Tualatin School District 23J have had the opportunity to review the proposal and have offered no objections.

BASED ON THE FINDINGS INDICATED ABOVE, PLANNING STAFF RECOMMENDS APPROVAL OF ZONE CHANGE ANNEXATION (ZCA) 2004-00004 – MOUNTAIN VIEW ESTATES ANNEXATION.

PREPARED BY: Morgan Tracy
Associate Planner

July 28, 2005
DATE

APPROVED BY: Richard Bewersdorff
Planning Manager

July 28, 2005
DATE

SUPPLEMENTAL FINDINGS
CONCERNING COMPLIANCE WITH ORS CHAPTER 222
ZCA2004-00004 – Mountain View Estates

The City is proceeding with this annexation without an election in the territory to be annexed under ORS 222.125. That statute provides:

> The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.

The Council finds:

1. There is one owner of the two properties that are in the territory proposed for annexation under ZCA2004-00004. The owner has consented in writing to annexation to the City of Tigard and those consents have been duly filed with the City.

2. According to County voter registration information, there are no current registered voters residing in the territory to be annexed under ZCA2004-00004. The City had received signed consents to annexation to the City of Tigard from all four previous registered voters.

3. Because the City has written consent of all owners of land and there are no currently registered voters in the territory proposed to be annexed under ZCA2004-00004, the City may proceed with annexation of that territory without a vote in the territory to be annexed, pursuant to ORS 222.125, because it has the consent of all owners and there are no electors.

FINDINGS IN RESPONSE TO COMMENTS

At the August 9, 2005, the City Council received testimony from various persons regarding four proposed annexations. The Council allowed all parties until August 16 to submit additional written information. This document sets out the City's findings on the legal and factual issues raised by the testimony and written submissions. The Council received a request to reopen the record to allow a response to the post-hearing written submissions and allowed until August 30 for persons to raise new issues relating to the new testimony, as provided by ORS 197.763(6)(c) and 197.763(7). This document sets out the City's findings on the legal and factual issues raised by the testimony and written submissions.

1. After the Council allowed additional time to raise new issues in response to new evidence submitted in the post-hearing written submissions, the City received two submissions, both e-mails sent by Julie Russell. Neither of those submissions raises new issues because all issues presented in her e-mails had been raised previously. Furthermore, neither of the submissions addresses new evidence submitted after the close of the oral hearing, but simply contain further argument on the same factual and legal issues she and other opponents had raised in her earlier submissions. Therefore, neither are proper submissions under ORS 197.763(6)(c) and 197.763(7).

Issues Raised By More Than One Person

HB 2484

2. Some people testified that House Bill 2484 (which has been enacted into law) either prevents the City from approving these annexations or demonstrates a legislative intent that a vote is required in any area to be annexed. House Bill 2484 is straightforward. It amends ORS195.215, to make it clear that "annexation plans" under ORS Chapter 195 must be approved both by a majority of voters in the territory to be annexed and by a majority within the City.

   A. HB 2484 does not apply to the annexations being considered by the City because HB 2484 applies only to annexation plans under ORS Chapter 195, and the annexations before the City do not involve annexation plans or ORS Chapter 195. They are annexations under ORS Chapter 222, in particular ORS 222.125. HB 2484, even if it were effective, would not apply to or affect these annexations.

   B. HB 2484 requires a separate vote in the area to be annexed for annexation plan annexations. However, requiring a vote in the area to be annexed would be a meaningless and futile act for areas in which there are no registered voters. There are no registered voters in the area to be annexed in Mountain View Estates annexation (ZCA2004-00003) or in the Alberta Rider/Summit Ridge annexation area (ZCA2005-00003). All of the registered voters in the Arlington Heights 3 (ZCA20005-00001) and Wilson Ridge (ZCA 2005-00002) annexation have consented to annexation.

HB 2722

3. HB 2722 (which has been enacted into law) withdraws the right of cities to veto formation of new cities within three miles of their borders. Some opponents of annexation have argued that the intent of this bill is that the wishes of citizens in the affected areas are respected.

   A. HB 2722 does not apply to annexations.

   B. The affected areas are the areas to be annexed. Two types of persons have interests in the affected areas – those who own property and those who reside there. All owners of all properties to be annexed, and all voters in areas to be annexed have consented to the annexation. No owner or resident in the areas to be annexed has indicated that they do not wish annexation.

SB 877

4. SB 877 (which has been enacted into law) has three major effects. One is that it limits the ability of the City of Beaverton to annex "islands" of territory surrounded by that City. The second effect is that it requires a majority vote in the territory to be annexed by means of an annexation plan under ORS Chapter 195. The third effect is to prohibit the annexation of certain types of industrial property without the consent of the owner.

   A. The provisions affecting only the City of Beaverton do not apply to the City of Tigard.

   B. None of the proposed annexations are "island" annexations, although an "island" is created by the Alberta Rider School/Summit Ridge annexation.

   C. The annexations are not annexation plan annexations and are not subject to ORS Chapter 195.

   D. The annexations are not of industrial land and are not the type of land that cannot be annexed without the consent of the owner. The City has the consent of all owners of all land being annexed.

Voluntary or Coerced Consents

5. Some persons argued that the consents are not valid because they were coerced.

   A. None of the people who provided consents stated they were coerced. Those who testified that the consents were coerced did not specify which persons were coerced. Several persons representing property owners (Tom Weber, John Marquart, Sean Foushee, and Al Jeck) testified orally and/or in writing that consents were voluntary and not coerced. The City Council finds that there is no evidence that any specific individual was coerced into consenting to annexation.

If any person who provided consents believed that the consents were coerced, it is likely that the person would have appeared at the hearing. The Council finds the testimony of Tom Weber, John Marquart, Sean Foushee and Al Jeck to be more persuasive than the evidence of those claiming coercion because the named individuals were in a position to know whether the consents were voluntary or coerced and those who claimed that the consents were coerced did not have personal knowledge regarding the consents. The Council concludes that none of the consents were coerced.

B. ORS 222.115 specifically authorizes contracts between a city and a landowner relating to the extraterritorial provision of service in which the landowner consents to annexation. The fact that the City requires a consent to annexation in return for a contract for the extraterritorial provision of service is explicitly authorized by statute and does not constitute coercion. The City provides planning and building inspection services extraterritorially and may require consents to annexation in order to provide those services.

C. ORS 222.175 recognizes that cities may solicit consents to annexation. The fact that a City seeks consents does not mean that they were coerced and does not invalidate the consents.

Consents To Annexation In Connection With A Land Use Proceeding

6. Some opponents argued that some of the consents were required in connection with land use proceedings, and the City cannot require consents to annexation in order to process a land use application or as a condition of a land use approval.

A. For consents that were provided in connection with a land use approval, the time to challenge the City's authority to impose the consents was during the land use process. In each case, the land use process has been completed and the appeal period has passed. The requirement to provide a consent to annexation can no longer be challenged.

B. None of the persons who provided consents in connection with land use proceedings have in any way challenged the consents or the requirement to provide the consents. To the contrary, some of them have expressly testified that they affirmatively desire that their properties be annexed to the City of Tigard.

General Concern For The Bull Mountain Area

7. Some opponents stated concerns related to the Bull Mountain area in general and to their property in unincorporated areas of Bull Mountain. Some of them argue that the proposed annexations should not proceed because of the negative vote when the Bull Mountain Annexation Plan was presented to the voters in the area to be annexed.

A. The rights and interests of the owners and registered voters in the areas proposed for annexation are recognized by statute. The statutes do not create a legally protected interest for other persons.

B. These annexations are different from the annexation plan presented to the voters. These annexations are property-specific annexations under ORS Chapter 222. The City and the annexation applicants are not requesting approval of an annexation plan. The rejection of an annexation plan under ORS Chapter 195 does not prevent later annexation of specific territory under a different annexation statute.

"Double Majority" Vote

8. Some opponents of the annexation argued that a "double majority" vote (a separately tabulated vote in the City and in the area to be annexed) is required.

A. A "double majority" vote is or will be required for annexation plans under ORS Chapter 195. However, for annexations under ORS Chapter 222, votes in the City are not required unless required by City charter or ordinance, and votes in the area to be annexed are not required if certain criteria are met. A vote in the area to be annexed is not required if all of the owners of all of the land and a majority of the electors in the area to be annexed, if any, consent to the annexation. ORS 222.125. The City Charter and Code do not require a vote within the City.

B. As to each of the annexations, the City has received the consents of all of the owners of all of the land. The City has also received the consents of all of the registered voters in each area that has registered voters. These annexations are not annexation plan annexations under ORS 195, so the double majority requirement does not apply. The City is not required to hold a vote in any of the territories to be annexed, either because there are no electors in the areas to be annexed or because the City has the consent of a majority of the electors in those areas.

"Islands" Of Unincorporated Areas Surrounded By The City

9. Some opponents argued that these annexations create islands of unincorporated areas surrounded by the City. They also note that the City may later annex those islands without consent of owners or electors.

A. There is no legal prohibition on the creation of islands. The City must consider annexation applications that create islands under applicable standards. While the Council must consider whether the borders created by an annexation are so irregular as to potentially cause problems with the provision of police services, the police department accepts these boundaries as being acceptable and not causing confusion for the provision of police services. The police department has provided written statements that they can provide services. The Council finds that

the boundaries are not irregular to the extent they create confusion in the provision of police services.

B. The City does have the authority to annex islands, but is aware that the statutory authority to annex islands may be withdrawn, as it has been withdrawn from one other city and from certain types of land. The possibility of a future annexation proceeding is not an applicable standard or criterion in deciding whether to approve these annexations.

Regular Boundaries

10. Several persons commented that the annexations will not result in a regular boundary.

A. The applicable standard is Comprehensive Plan Policy 10.1.2, which provides:

Approval of proposed annexations of land by the City shall be based on findings with respect to the following:

a. The annexation eliminate an existing "pocket" or "island of unincorporated territory; or

b. The annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the City;

c. The police department has commented on the annexation;

d. The land is located within the Tigard Urban Planning Area and is contiguous to the City boundary;

e. The annexation can be accommodated by the services listed in 10.1.1(a).

B. Policy 10.1.2 is complied with if either (1) subsection a or (2) subsections b through e are met. These annexations comply with subsections b through e. The annexation boundary will not make it difficult for the police in emergency situations to determine whether the parcel is within or without the City. The police department has commented on the annexation and stated that it is capable of providing service. All areas proposed for annexation are within the Tigard Urban Planning Area and are contiguous to the City. The services listed in 10.1.1(a) (water, sewer, drainage, streets, police and fire protection) can be provided to the areas to be annexed – the City and other responsible service providers have capacity to provide service to the areas to be annexed.

Individual Comments – Testimony at Hearing

Les and Ellen Godowski

11. The Godowskis argued that the annexations will also prevent certain areas from creating their own cities or annexing to King City.

    A. The City has no obligation to refrain from annexing territory based on the possibility that some other city may be incorporated in the area at some point in the future.

    B. All applicable plans and intergovernmental agreements that address urbanization or the provision of urban services designate Tigard as the City that will annex and/or provide urban services to the areas being annexed.

Charles Radley

12. Charles Radley argued that the annexations would violate *Dolan v. City of Tigard* and that there is no "essential nexus." Mr. Radley also provided a written document.

    A. *Dolan v. City of Tigard* applies only to cases in which the City exacts property from a property owner at the time of a land use approval. *Dolan* does not apply to annexations.

    B. To the extent the Mr. Radley is arguing that the City could not require the property owners to consent to annexation as a condition of land use approval, that challenge is too late. The land use approvals are final and cannot be collaterally challenged. Furthermore, Mr. Radley was not the applicant or a landowner in any of the land use cases and lacks standing to challenge conditions that have been accepted by the applicants.

    C. The "essential nexus" requirement is imposed on exactions by the *Nollan v. California Coastal Commission* case. Like *Dolan*, the case applies only to exactions at the time of land use approvals, not to annexations. To the extent that Mr. Radley is challenging conditions of approval in the previous land use cases, that challenge is too late, and Mr. Radley lacks standing to make the challenge.

    D. The document that Mr. Radley provided is an excerpt discussing the requirement, under Rhode Island law, that a building official must issue a building permit that meets the requirements of the building code. Rhode Island law concerning building officials is not relevant to any issue regarding these annexations. If Mr. Radley is attempting to argue that the City cannot require a consent to annexation, any requirement regarding consents to annexations by the City are imposed in the context of a land use proceeding. The City has more authority and more discretion in land use proceedings than in issuing building permits.

Julie Russell

13. In addition to issues raised by others, Ms. Russell claimed that the map included with the notice of annexation was inaccurate as to which areas are included within the City limits and which areas are outside the City limits. Ms. Russell argued that the City's process violated Comprehensive Plan Policies 2.1.1. and CDC 18.320.020. Ms. Russell stated dissatisfaction with the proposed zoning.

A. The maps provided with the notice were accurate. They showed the location of the properties being annexed and accurately showed areas within the city limits by a shaded yellow area. There is no requirement to provide a map with the notice of the annexation hearing. Even if there was some inaccuracy, the maps provided sufficient information to advise of the location of the properties to be annexed and their relationship to the City. The City provided notice in compliance with all applicable requirements. In the event that some person may have failed to receive notice, failure of a person to receive notice does not invalidate the notice, which was properly provided.

B. Comprehensive Plan Policy 2.1.1 provides: "The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process." This policy is not an approval standard or criterion for an annexation application. The City's land use regulations have been acknowledged, and those regulations provide the process, including citizen involvement, for considering land use applications. That process includes notice and a hearing, and the City provided notice and a hearing, as required by the CDC. Compliance with the acknowledged regulations demonstrates compliance with the Comprehensive Plan policies implemented by the regulations. Citizens, including Ms. Russell, have had the opportunity to be involved in process. The process of necessity works differently in a quasi-judicial land use process than in a legislative process.

C. CDC 18.320.020 provides:

18.320.020 Approval Process and Standards

A. Approval Process. Annexations shall be processed by means of a Type IV procedure, as governed by Chapter 18.390 using standards of approval contained in Subsection B2 below.

B. Approval Criteria. The decision to approve, approve with modification, or deny an application to annex property to the City shall be based on the following criteria:

1. All services and facilities are available to the area and have sufficient capacity to provide service for the proposed

annexation area; and

2. The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.

C. Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.

D. Conversion table. Table 320.1 summarizes the conversion of the County's plan and zoning designations to City designations which are most similar.

The City used a Type IV approval process. The City has capacity to provide all required services to the area to be annexed, and the applicable Comprehensive Plan Policies, including those in Chapter 10, have been satisfied. The properties being annexed already have City comprehensive plan and zoning designations, that have been adopted and imposed by the County. Ms. Russell specifically argued that the City lacks parks capacity in the area. However, the City has sufficient parks capacity throughout the City to provide service to its residents, including residents in the areas being annexed. The services listed in the Comprehensive Plan, water, sewer, storm sewer, streets, police and fire protection, are the essential services that must be available, and those services will be available to the newly annexed areas. Ms. Russell questioned the adequacy of the street system. The City Council finds that the street system is adequate to provide service and will remain adequate. If the properties are not annexed, they could still be developed consistent with the County zoning, which is the same as City zoning, so whether the properties are annexed or not does not affect the impact on the street system.

D. The areas to be annexed all have existing City zones that were established consistent with Table 320.1. The zoning is consistent with the Comprehensive Plan and applicable Community Development Code provisions.

Scott Miller

14. In addition to issues addressed in the "Issues Raised By More Than One Person" section of these findings, Mr. Miller stated a concern with an increase in taxes. Mr. Miller also argued that the consents received by the City are not consents.

    A. Mr. Miller does not own property being annexed. His property is outside the area proposed for annexation. His taxes will not increase as a result of the annexation. The property owners in the area to be annexed have consented to the annexation. Whether taxes may increase is not an applicable standard or criterion in deciding an annexation.

    B. For each of the annexations, the City has either the written consent of the property owners or a petition from the property owners to initiate the annexation. All are valid consents.

Lisa Hamilton Treick

15. In addition to issues address in the "Issues Raised By More Than One Person" section of these findings, Ms. Hamilton Treick argued that Measure 37 gives property owners rights that are violated by these annexations.

    A. Ms. Hamilton Treick does not own property that will be annexed by these annexations. All owners of property being annexed have consented to these annexations. The property owners or their representatives who testified expressly stated that they voluntarily consent to the annexations. One of them, Tom Weber, stated that he actively sought annexation to Tigard because of the value it brings to his property. Measure 37 is not an applicable standard or criterion for annexation.

16. Ms. Hamilton Treick also argued that the City has no authority to condition land use approvals or acceptance of land use applications on a consent to annexation.

    A. This is a challenge to final land use decisions that were not been appealed within the time allowed by statute. Those decisions cannot be collaterally attacked.

    B. The various agreements with the County and other urban service providers, including the Urban Services Intergovernmental Agreement and Tigard Urban Service Agreement, anticipate that the City will provide planning services and will ultimately annex Tigard's urban service area. Requiring annexation is not inconsistent with those agreements. Urban Service Agreement Section I.D provides that the City shall endeavor to annex certain areas, including all areas currently proposed for annexation. Requiring annexation consents effectuates this provision of the Urban Service Agreement. The Urban Services Intergovernmental Agreement gives Tigard all land use decision-making authority

over the area to be annexed. Land use authority includes the authority to impose conditions. The City has the authority to impose a condition of approval requiring consent to annexation when it receives a land use application for a property outside the City.

Individual Comments – Post-Hearing Written Submissions

Julie Russell

17. Ms. Russell again discussed general opposition to annexation in the Bull Mountain area, HB 2484, SB 887, Comprehensive Plan Policies 2.1.1.and 10.1.2, and CDC 18.320.020. The above findings address those arguments.

18. Ms. Russell also argues that the zoning is wrong and inconsistent with the Bull Mountain Community Plan. The areas have all been rezoned by the County and the zoning being applied is the zoning required by CDC 18.320. Furthermore, as demonstrated in the written testimony of John Marquart, there is little or no practical difference between Washington County R-6 and Tigard R-7 zoning, as applied.

19. Ms. Russell argues that not everyone who was entitled to receive notice actually received notice. The City provided notice as required by applicable regulations. While it is possible that some persons did not receive notice, the City complies with the notice requirements.

20. Ms. Russell complains about possible effects on other service providers. The City has not received any negative comments from other service providers. All service providers in the area have agreed that the area being annexed will be annexed to Tigard. Services will be provided as agreed to in the Urban Services Agreements entered into by the City and other service providers.

21. Ms. Russell argues that the annexation will interfere with the orderly and economic provision of public facilities and services. However, her argument appears to be that services can be provided without annexation. That does not mean that annexation will disrupt or interfere with service provision. The agreements between the service providers will ensure orderly and economic provision of services.

22. Ms. Russell argues that the Alberta Rider School property should not be annexed. None of her arguments relate to any applicable standard or criterion.

23. Ms. Russell opposes the Summit Ridge annexation as non-contiguous. The Summit Ridge area being annexed will be contiguous with the City on annexation.

24. Ms. Russell objects to the Annexation of Arlington Heights 3 on the grounds that the annexation will cause annexation to a homeowners association. That argument does not related to any applicable standard or criterion. Participation in a homeowner's association is a matter of contract between the parties and unrelated to a City's authority

to annex. Ms Russell also argues that the City cannot annex only part of a subdivision. No applicable standard or criterion prohibits annexation of part of a subdivision. Furthermore, Arlington Heights 3 is a separate subdivision from Arlington Heights 1 and 2.

LaVelle and Marie Day

25. The Days object to the annexation on the grounds that the annexation may interfere with efforts to annex to King City or to create a new city. This argument does not relate to any applicable criterion or standard. None of the Days' other arguments are based on applicable standards or criteria.

Jackie and Gary Kisling

26. The Kislings raise issues related to HB 2484 and HB 2722. Those bills are addressed in the above findings.

Henry Kane

27. Mr. Kane makes arguments against island annexations. None of the annexations are island annexations.

Lisa Hamilton-Treick and Tom Treick

28. Ms. Hamilton-Treick and Mr. Treick oppose the process in which the hearings on four annexations were combined as causing hardship on those who wish to appeal. Even if the hearings had not been combined, the hearings could have been, and most likely would have been held at the same meeting. Therefore, the appeals would have all been due at the same time. Combining the hearings allowed people to state their objections a single time so as to avoid multiple repeated testimony. All persons were given a full opportunity to address any issues related to any of the four annexations.

29. They also object to the boundaries as being irregular and question the voluntariness of the consents. These issues are addressed above.

30. They also oppose the transfer of Traffic Impact Fees to Tigard's TIF accounts. That is not a relevant issue and does not relate to any applicable standard or criterion.

Philip E. Decker

31. Mr. Decker opposes the annexations as not being contiguous. No property being annexed will be separated from the City by any intervening unincorporated territory. The annexations are of contiguous property.

32. Mr. Decker argues that ORS 222.115 allows annexation contracts only for contiguous parcels. ORS 222.115 does not require that property be contiguous at the time an

annexation contract is signed. One purpose of ORS 222.is to allow properties that are not contiguous to consent to annexation so that they can receive urban services immediately and be annexed later when intervening properties annex. The contiguity requirement applies only when the annexation becomes effective.

33. Mr. Decker argues that the areas being annexed are irregularly shaped. The shape of the area being annexed is not an issue.

34. Mr. Decker argues that previous annexations were improper. The previous annexations are final and have not been challenged. They cannot be collaterally attacked at this time.

Comments In Support

35. After the hearing, the City received several written comments in support of the proposed annexations, including statements from Sean Foushee, on behalf of the applicants for the Mountain View Estates, from John Marquart on behalf of the applicant for the Wilson Ridge annexation, and from Tom Weber, on behalf of the owners of the Arlington Heights 3 property, all of whom stated that the annexation applications were voluntary. Mr. Marquart and Mr. Weber addressed other issues, strongly supporting the annexations of their respective areas.

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CITY OF TIGARD, OREGON

ORDINANCE NO. 2005-_____

AN ORDINANCE ANNEXING 6.94 ACRES, APPROVING MOUNTAIN VIEW ESTATES ANNEXATION (ZCA2004-00004), AND WITHDRAWING PROPERTY FROM THE TIGARD WATER DISTRICT, WASHINGTON COUNTY ENHANCED SHERIFF'S PATROL DISTRICT, WASHINGTON COUNTY URBAN ROADS MAINTENANCE DISTRICT, WASHINGTON COUNTY STREET LIGHTING DISTRICT #1, AND THE WASHINGTON COUNTY VECTOR CONTROL DISTRICT.

WHEREAS, the City of Tigard is authorized by ORS 222.120(4)(B) and 222.170 to initiate an annexation upon receiving consent in writing from a majority of the electors registered in the territory proposed to be annexed and written consent from owners of more than half the land in the territory proposed to be annexed; and

WHEREAS, the City of Tigard is authorized by ORS 222.120(5) and 222.520 to withdraw properties which currently lie within the boundary of the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District upon completion of the annexation; and

WHEREAS, the Tigard City Council held a public hearing on August 9, 2005 to consider the annexation of two (2) parcels of land consisting of 6.94 acres and withdrawal of said property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, the City Council left the record open for written submissions for an additional seven days after the hearing on August 9, 2005 and allowed a further seven days on August 23, 2005 for submission of responses to new evidence submitted during that time, as provided by ORS 197.763(6)(c); and

WHEREAS, pursuant to ORS 222.520(2) the City is liable to the Water District for certain debt obligations, however, in this instance the Water District has no debt for the City to assume, therefore, no option regarding the assumption of debt needs to be made; and

WHEREAS, pursuant to Metro 3.09, ORS 222.120 and 222.524, notice was given and the City held a public hearing on the issue of the annexation into the City and withdrawal of the annexed property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, pursuant to ORS 222.524, the City must declare the withdrawal of annexed properties from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District by Ordinance; and

WHEREAS, the Tigard Development Code states that upon annexation, the zone is automatically changed to the City zoning most closely conforming to the County zoning; and

WHEREAS, the current zoning district is R-7, an existing City zone that has been adopted by the County and the zoning after annexation would remain R-7 so that no zone change is necessary, and by annexation the Comprehensive Plan of the City of Tigard goes into effect; and

WHEREAS, the annexation has been processed in accordance with the requirements of Metro 3.09 and has been reviewed for compliance with the Tigard Community Development Code and the Comprehensive Plan and the annexation substantially addresses the standards in Metro 3.09 regulating annexations; and

WHEREAS, the City Council has carefully considered the testimony at the public hearing and the written materials submitted after the hearing and determined that withdrawal of the annexed properties from the applicable service districts is in the best interest of the City of Tigard.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The Council adopts the staff report and the document entitled "Supplemental Finding Concerning Compliance with ORS Chapter 222" as findings. In addition, Council adopts the document entitled "Findings in Response to Comments" as additional findings of fact.

SECTION 2: The Tigard City Council hereby annexes the parcels described in the attached **Exhibit "A"** and shown in **Exhibit "B"** and withdraws said parcels from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District.

SECTION 3: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor and posting by the City Recorder.

SECTION 4: City staff is directed to take all necessary measures to implement the annexation, includingfiling certified copies of the Ordinance with Metro for administrative processing, filing with state and county agencies as required by law, and providing notice to utilities.

SECTION 5: Pursuant to ORS 222.120(5), the effective date of the withdrawal of the property from the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District shall be the effective date of this annexation.

SECTION 6: Pursuant to ORS 222.465, the effective date of the withdrawal of this property from the Tigard Water District shall be July 1, 2006.

SECTION 7: In accordance with ORS 222.180, the annexation shall be effective upon filing with the Secretary of State.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2005.

Cathy Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2005.

Craig Dirksen, Mayor

Approved as to form:

City Attorney

Date

EXHIBIT A

Mountain View Estates
ZCA2004-00004

Legal Description for Annexation

COMBINED TAX LOTS 2S110CB-00100 and 2S110CB-00500

Owners: Dwight C. Minthorne and Karla Minthorne (T.L. 500)
Owners: Richard R Wright and Diane M. Wright (T.L. 100)

A tract of land in Section 10, Township 2 South, Range 1 West of the Willamette Meridian in Washington County, State of Oregon and being more particularly described as follows:

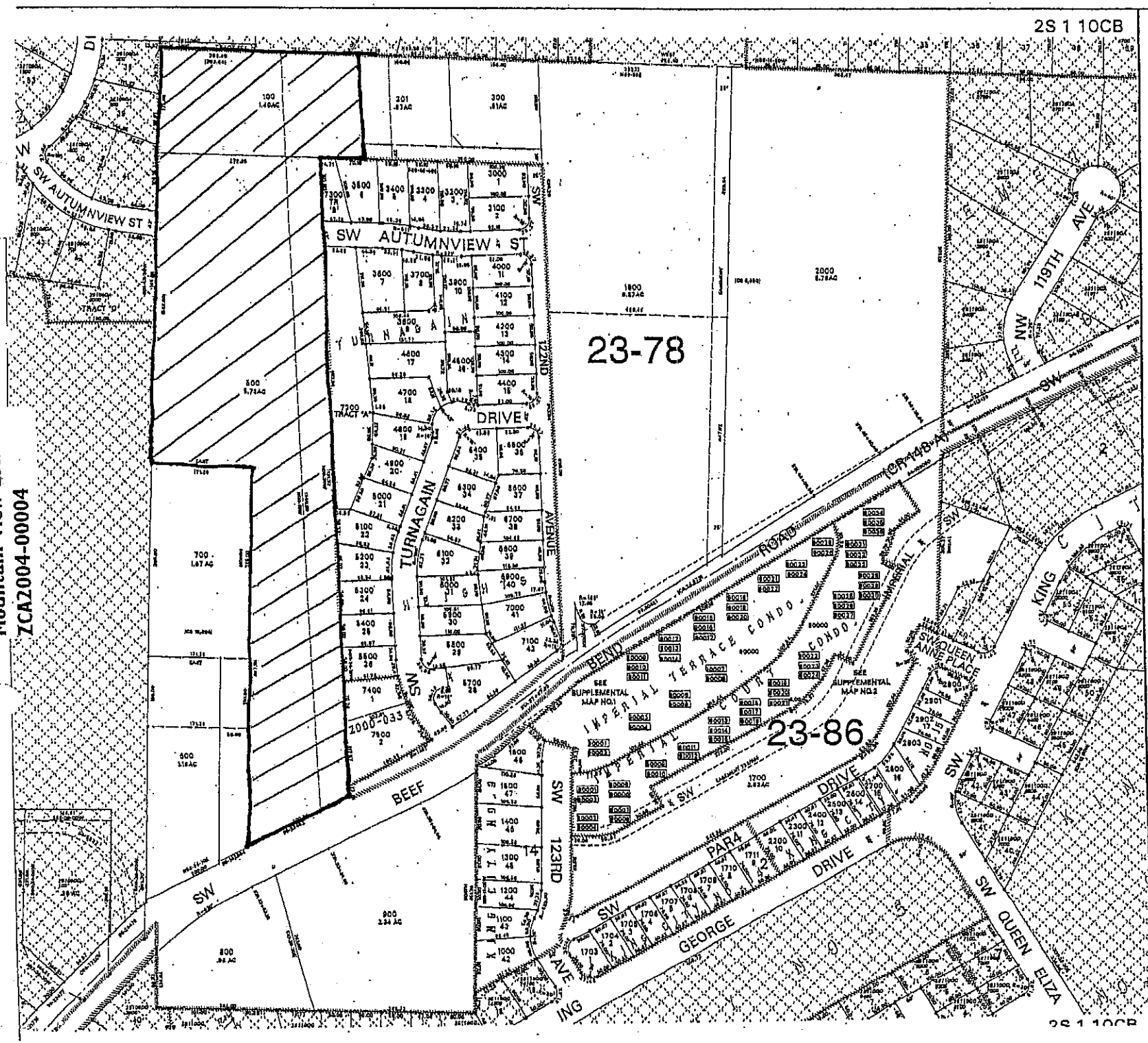
Commencing at the West quarter corner of Section 10, Township 2 South, Range 1 West of the Willamette Meridian, in the County of Washington, State of Oregon, said point also being the Initial Point; thence, South 89°58'17" E a distance of 333.50 feet along the South line of "Thornwood", a recorded subdivision in Washington County Survey Records; thence, South 03°15'00" East a distance of 175.10 feet along the West line of that tract of land described in Document Number 99111751, Washington County Deed Records to the North line of "Turnagain Heights", a recorded subdivision in Washington County Survey Records; thence, North 89°55'03" West a distance of 70.73 feet along the North line of said "Turnagain Heights" to the Northwest corner of said subdivision; thence, South 03°30'35" East a distance of 1076.57 feet along the West line of said "Turnagain Heights" to the North line of S.W. Beef Bend Road, County Road Number A-148; thence, along said North line, along a curve to the left having a radius of 1467.00 feet through a central angle of 00°50'44", the long chord of which bears S 61°57'56" W a distance of 21.65 feet; thence, along said line, South 62°23'18" West a distance of 161.60 feet along said North line; thence, along said North line, along a curve to the right having a radius of 858.00 feet through a central angle of 00°22'39", the long chord bears South 62°11'59" West a distance of 5.65 feet to the West line of that tract of land described in Document Number 78044753, Washington County Deed Records; thence, North a distance of 629.34 feet along said West line to the Northeast corner of said tract of land; thence, West a distance of 171.29 feet along the North line of said tract of land to the East line of that tract of land described in Document Number 2004-032242, Washington County Deed Records; thence, North a distance of 707.80 feet along the East line of said tract of land and the East line of "Arlington Heights No. 2", a recorded subdivision in Washington County Survey Records to the Initial Point.

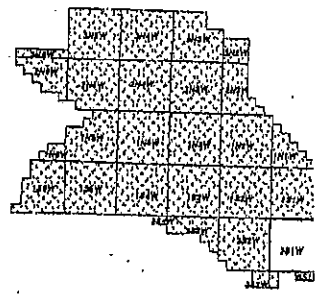
Contains 302,171 square feet, 6.94 acres, more or less.

EXHIBIT B

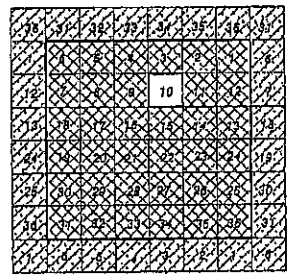
Mountain View Estates

ZCA2004-00004

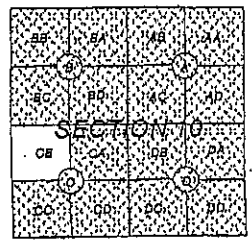




WASHINGTON COUNTY OREGON
NW1/4 SW1/4 SECTION 10 T2S R1W W.M
SCALE 1" = 100'



FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT
www.co.washington.or.us



Cancelled Taxlots For: 2S110CB

1701, 1712, 1713, 1714, 2100, 801, 1900, 1717, 1718, 701, 800, 101, 1702, 1715, 1716, 1719, 81102, 81103, 81106, 81107, 81201, 81204, 81205, 81208, 82101, 82104, 82107, 82113, 82202, 82203, 82206, 82211, 82503, 82309, 82309, 82312, 83101, 83103, 83105, 83202, 83204, 83206, 81101, 81103, 81105, 81107, 81202, 81204, 82105, 81204, 82101, 82103, 82202, 82204, 83101, 83104, 83202, 83205, 83303, 83305, 84101, 84104, 84107, 84110, 84113, 84116, 84202, 84205, 84208, 84211, 84214, 84217, 84303, 84306, 84308, 84312, 84315, 84318, 400, 401, 402, 8800,

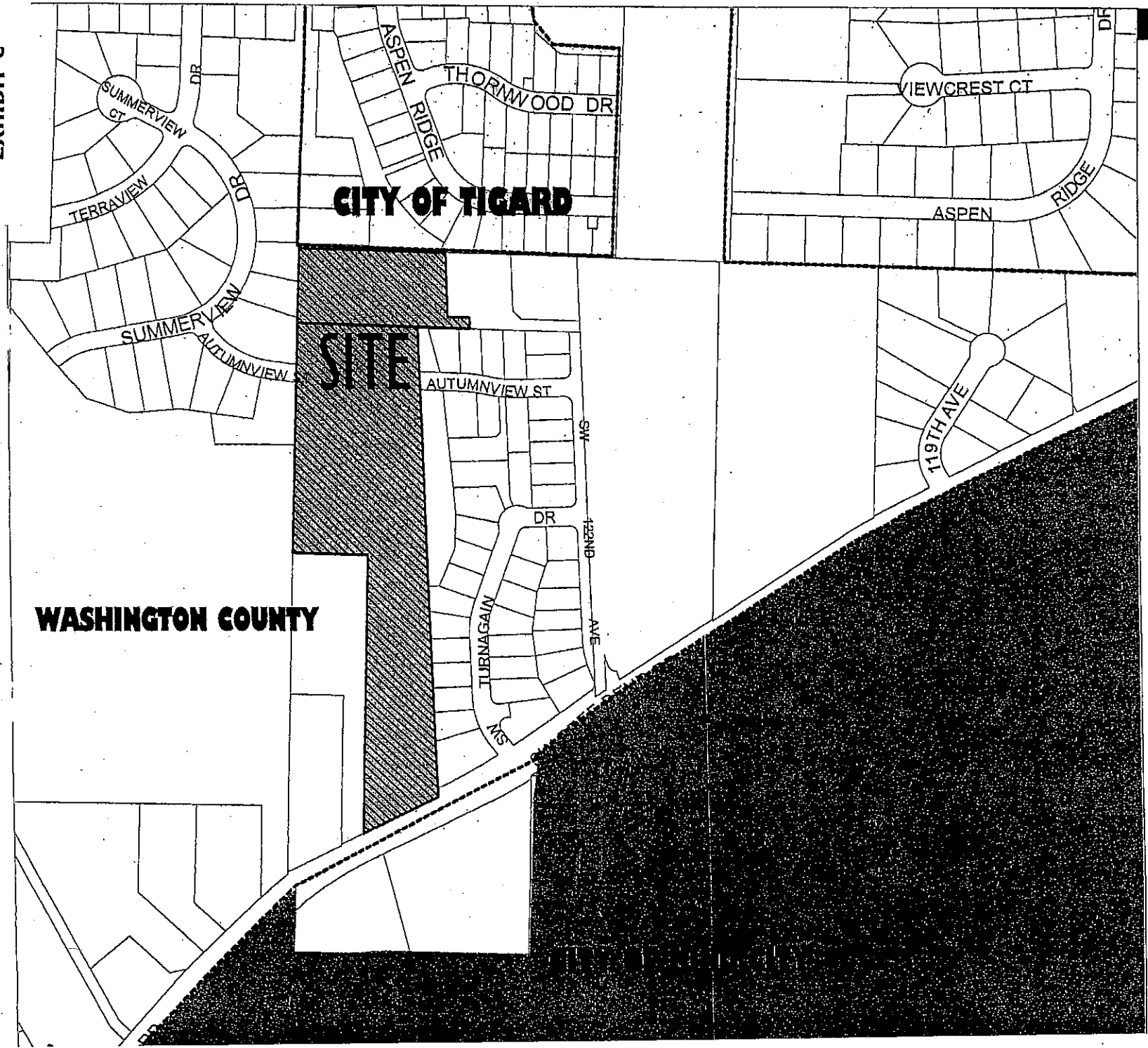
Assessment
Taxation

PLOT DATE: November 24, 2003
FOR ASSESSMENT PURPOSES ONLY - DO NOT RELY ON FOR OTHER USE

Map areas delineated by either gray shading or a cross-hatched pattern are for reference only and may not indicate the exact current property boundaries. Please consult the appropriate map for the most current information.

KING CITY
2S 1 10CB

EXHIBIT C



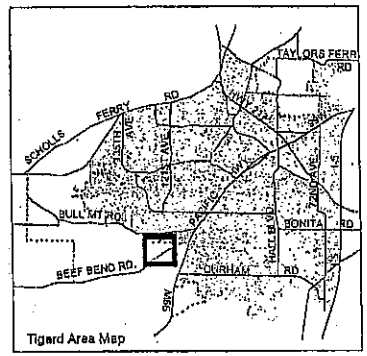
CITY of TIGARD

GEOGRAPHIC INFORMATION SYSTEM

VICINITY MAP

ZCA2004-00004

MOUNTAIN VIEW ESTATES SUBDIVISION ANNEXATION



N

0 100 200 300 400 Feet

1" = 312 feet

City of Tigard

Information on this map is for general location only and should be verified with the Development Services Division
13125 SW Hall Blvd
Tigard, OR 97223
(503) 639-4171

ATTACHMENT 4

Agenda Item: 7
Hearing Date: August 9, 2005 7:30 PM

STAFF REPORT TO THE CITY COUNCIL FOR THE CITY OF TIGARD, OREGON

CITY OF TIGARD
Community Development
Shaping A Better Community

SECTION I. APPLICATION SUMMARY

FILE NAME: ARLINGTON HEIGHTS 3 ANNEXATION

CASE NO.: Zone Change Annexation (ZCA) ZCA2005-00001

OWNERS:

Matrix Development Corp.
12755 SW 69th Avenue, Ste #100
Tigard, OR 97223

Richard And Betty Simerson
12455 SW Beef Bend Rd
Tigard, OR 97223

Walling, Roger/Jacqueline
12475 SW Beef Bend Road
Tigard, OR 97224

PROPOSAL: The applicant has applied for annexation of 16.97 acres into the City of Tigard.

CURRENT ZONING DESIGNATION: R-7, Medium Density Residential.

EQUIVALENT CITY ZONING DESIGNATION: R-7, Medium Density Residential. The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of 10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.

LOCATION: WCTM 2S109DA Tax Lot 2100; and 2S110CB Tax Lots 600 and 700.

APPLICABLE REVIEW CRITERIA: Community Development Code Chapters 18.320 and 18.390; Comprehensive Plan Policies 2 and 10; Metro Code Chapter 3.09; and ORS Chapter 222.

SECTION II. STAFF RECOMMENDATION

Staff recommends that the Council find that the proposed annexation will not adversely affect the health, safety and welfare of the City. Therefore, staff recommends **APPROVAL** of the annexation by adoption of the attached ordinance.

SECTION III. BACKGROUND INFORMATION

Site Information and Proposal Description:
The applicant/owner, Matrix Development, has applied for subdivision review, but that application has not completed its review at the time of this report. The subdivision is tentatively named Arlington Heights 3. A standard condition of approval for subdivision proposals on property that borders City limits within the Urban Services Intergovernmental Agreement area is that the property annex prior to final plat approval. There is no requirement that an applicant or property owner wait until receiving land use approval to annex the property. A parcel that is contiguous to the city limits may apply for annexation at any time. The total area represented in this annexation request is 16.97 acres and is contiguous to the present city limits along the western property boundary.

Vicinity Information:
The subject parcels are located north of SW Beef Bend Road, south of Arlington Heights 1 and 2, and east of Summit Ridge subdivision.

SECTION IV. APPLICABLE REVIEW CRITERIA AND FINDINGS

The relevant criteria in this case are Tigard Comprehensive Plan Policies 2.1.1, 10.1.1, 10.1.2, and; Tigard Community Development Code Chapter 18.320.

Staff has determined that the proposal is consistent with the relevant policies of the Comprehensive Plan based on the following findings:

Comprehensive Plan
Policy 2.1.1: The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process.

This Policy requires an ongoing citizen involvement program. Interested parties and surrounding property owners within 500 feet have been notified of the public hearing and notice of the hearing has been published in a newspaper of general circulation. The site has been posted since June 23, 2005. There have been a number of opportunities for citizens to be involved in the decision making process, including the approval of the subdivision request.

Policy 10.1.1: The City shall review each of the following services as to adequate capacity, or such services to be made available, to serve the parcel if developed to the most intense use allowed, and will not significantly reduce the level of services available to developed and undeveloped land within the City of Tigard. The services are: water, sewer, drainage, streets, police, and fire protection.

This policy requires adequate service capacity delivery to annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. While the subdivision request has not completed its review, staff finds that there are three roads stubbed to the parcel, an 8" water line stubbed to the site, an 8" CWS sewer line along the east boundary, and drainage on the site is presently provided by two natural drainageways. Before the land is developed at its designated capacity of 7 units to the

gross acre, the subdivision review will require that adequate facilities are available and upsized if necessary to handle the development. By providing this infrastructure, the site will have adequate service capacity. This policy is satisfied.

If required by an adopted capital improvements program ordinance, the applicant shall sign and record with Washington County a nonremonstrance agreement regarding the following: The formation of a local improvement district (L.I.D.) for any of the following services that could be provided through such a district. The extension or improvement of the following: water, sewer, drainage and streets. The formation of a special district for any of the above services or the inclusion of the property into a special service district for any of the above services.

No L.I.D's have been required with the subject parcels or subdivision approval. All public infrastructure listed above will have to be completed before the land is subdivided by a subdivision plat. The costs of providing such services will be borne by the applicant. Since there are no capital improvements identified for this site, no nonremonstrance agreement is necessary.

The City shall provide urban services to areas within the Tigard urban planning area or with the urban growth boundary upon annexation.

The City of Tigard has an urban services agreement with Washington County for those areas within the City's urban growth boundary. This policy has been complied with.

Policy 10.1.2: approval of proposed annexations of land by the city shall be based on findings with respect to the following: the annexation eliminates an existing "pocket" or "island" of unincorporated territory; or the annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the city; the police department has commented upon the annexation; the land is located within the Tigard urban planning area and is contiguous to the city boundary; the annexation can be accommodated by the services listed in 10.1.1(a).

This Policy pertains to boundary criteria for annexations. The proposed annexation will not eliminate an existing "pocket" or "island" of unincorporated territory; however the annexation will also not create an irregular boundary making it difficult for police to determine whether a particular parcel is in or outside the city. The proposed annexation will incorporate the entire subdivision boundary for Arlington Heights Phase 3. All future lots within this phase of the subdivision will be inside city limits. The police department has commented on the proposed annexation request and did not voice any objections. The land is within the Urban Services Area inside the Urban Growth Boundary and is bordered by the city limits on the northern side. Services to the subject property are addressed above. This policy is met.

<u>Community Development Code</u>
<u>Section 18.320.020:</u> This Section addresses approval standards for annexation proposals:

All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area;

Adequate service (water, sewer, drainage, streets, police, and fire protection) capacity is available to serve the annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. Additionally, the adequacy and availability of services to serve the intended R-7 Medium Density residential development will be reviewed and conditioned as necessary as part of the Arlington Heights 3 subdivision review. Therefore, this policy is satisfied.

The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.

Applicable Comprehensive Plan policies have been addressed above. The implementing ordinance provisions of ORS 222, TCDC 18.390, and Metro Code 3.09 were followed in processing this annexation request. Conformance with other development code provisions will be addressed at the time the property develops. This standard has been met.

Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or/zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.

The subject property is in the Urban Service Area and is zoned R-7 medium density residential, pursuant to the City of Tigard's Urban Services Intergovernmental Agreement. The R-7 zoning designation is consistent with the original Washington County's R-6 zoning designation as shown in the table below. The City's zoning was adopted by the County with the City's R-7 zoning district when the Intergovernmental Agreement was signed between the county and the city to provide city planning services to this area. Therefore, the property does not need to be rezoned upon annexation. According to Section 18.320.020.C, the City's Comprehensive plan and zoning designations occur automatically and concurrently with the annexation.

Conversion table. Table 320.1 summarizes the conversion of the County's plan and zoning designations to City designations which are most similar.

TABLE 320.1
CONVERSION TABLE FOR COUNTY AND CITY PLAN AND ZONING DESIGNATIONS

Washington County Land Use Districts/Plan Designation	City of Tigard Zoning	City of Tigard Plan Designation
R-5 Res. 5 units/acre	R-4.5 SFR 7,500 sq. ft.	Low density 1-5 units/acre
R-6 Res. 6 units/acre	R-7 SFR 5,000 sq. ft.	Med. density 6-12 units/acre
R-9 Res. 9 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-12 Res. 12 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-15 Res. 15 units/acre	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
R-24 Res. 24 units/acres	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
Office Commercial	C-P Commercial Professional	CP Commercial Professional
NC Neighborhood Commercial	CN Neighborhood Commercial	CN Neighborhood Commercial
CBD Commercial Business District	CBD Commercial Business District	CBD Commercial Business District
GC General Commercial	CG General Commercial	CG General Commercial
IND Industrial	I-1 Light Industrial	Light Industrial

Metro

Metro 3.09 requires the additional standards to be addressed in annexation decisions, in addition to the local and state review standards. These are addressed and satisfied as discussed below:

Consistency with the directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;

The processing has been done consistent with applicable Urban Service Provider agreements.

Consistency with directly applicable provisions of urban planning or other agreement, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;

The process required by the Development Code and Comprehensive Plan is consistent with the Urban Planning Agreement for annexations.

Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;

This has been discussed previously in this report and, as discussed, this criterion is satisfied.

Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plans;

Because the Development Code has been amended to comply with applicable Metro functional plan requirements, by complying with the Development Code and Comprehensive Plan, the annexation is consistent with the applicable Functional Plan and the Regional Framework plan.

Whether the proposed changes will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;

The proposed annexation will not interfere with the provision of public facilities or services because it is adjacent to existing city limits and services, and the delivery of those services was anticipated as part of the urban services agreement which is intended to promote the timely, orderly, and economic delivery of those public facilities and services.

If the proposed boundary change is for annexation of territory to Metro, a determination by Metro Council that the territory should be included in the Urban Growth Boundary shall be the primary criterion for approval;

The subject property is already within the Metro boundaries.

Consistency with other applicable criteria for the boundary change in question under state and local law.

Consistency with other applicable criteria has been discussed previously in this report.

SECTION V. AGENCY COMMENTS

Washington County Department Of Land Use & Transportation, Verizon, Qwest Communications, Northwest Natural Gas, Beaverton School District #48, Comcast Cable Corporation, Portland General Electric, Metro Area Communications, Cleanwater Services, Metro Land Use & Planning, Tualatin Hills Park & Rec. District, Tualatin Valley Water District, Tualatin Valley Fire & Rescue, and Tigard/Tualatin School District 23J have had the opportunity to review the proposal and have offered no objections.

BASED ON THE FINDINGS INDICATED ABOVE, PLANNING STAFF RECOMMENDS APPROVAL OF ZONE CHANGE ANNEXATION (ZCA) 2005-00001 – ARLINGTON HEIGHTS 3 ANNEXATION.

PREPARED BY: Morgan Tracy
Associate Planner

July 28, 2005
DATE

APPROVED BY: Richard Bewersdorff
Planning Manager

July 28, 2005
DATE

SUPPLEMENTAL FINDINGS
CONCERNING COMPLIANCE WITH ORS CHAPTER 222
ZCA2005-00001 – Arlington Heights 3

The City is proceeding with this annexation without an election in the territory to be annexed under ORS 222.125. That statute provides:

> The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.

The Council finds:

1. There are five owners of the three properties in the territory proposed for annexation under ZCA2005-00001 have consented in writing to annexation to the City of Tigard and those consents have been duly filed with the City.

2. According to County voter registration information, there are four registered voters residing in the territory to be annexed under ZCA2005-00001. The City has received signed consents to annexation to the City of Tigard from all four registered voters. Therefore, the City has received consents from a majority of the electors in the territory to be annexed under ZCA2005-00001.

3. Because the City has written consent of all owners of land and the majority of the voters in the territory proposed to be annexed under ZCA2005-00001, the City may proceed with annexation of that territory without a vote in the territory to be annexed, pursuant to ORS 222.125.

FINDINGS IN RESPONSE TO COMMENTS

At the August 9, 2005, the City Council received testimony from various persons regarding four proposed annexations. The Council allowed all parties until August 16 to submit additional written information. This document sets out the City's findings on the legal and factual issues raised by the testimony and written submissions. The Council received a request to reopen the record to allow a response to the post-hearing written submissions and allowed until August 30 for persons to raise new issues relating to the new testimony, as provided by ORS 197.763(6)(c) and 197.763(7). This document sets out the City's findings on the legal and factual issues raised by the testimony and written submissions.

1. After the Council allowed additional time to raise new issues in response to new evidence submitted in the post-hearing written submissions, the City received two submissions, both e-mails sent by Julie Russell. Neither of those submissions raises new issues because all issues presented in her e-mails had been raised previously. Furthermore, neither of the submissions addresses new evidence submitted after the close of the oral hearing, but simply contain further argument on the same factual and legal issues she and other opponents had raised in her earlier submissions. Therefore, neither are proper submissions under ORS 197.763(6)(c) and 197.763(7).

Issues Raised By More Than One Person

HB 2484

2. Some people testified that House Bill 2484 (which has been enacted into law) either prevents the City from approving these annexations or demonstrates a legislative intent that a vote is required in any area to be annexed. House Bill 2484 is straightforward. It amends ORS195.215, to make it clear that "annexation plans" under ORS Chapter 195 must be approved both by a majority of voters in the territory to be annexed and by a majority within the City.

   A. HB 2484 does not apply to the annexations being considered by the City because HB 2484 applies only to annexation plans under ORS Chapter 195, and the annexations before the City do not involve annexation plans or ORS Chapter 195. They are annexations under ORS Chapter 222, in particular ORS 222.125. HB 2484, even if it were effective, would not apply to or affect these annexations.

   B. HB 2484 requires a separate vote in the area to be annexed for annexation plan annexations. However, requiring a vote in the area to be annexed would be a meaningless and futile act for areas in which there are no registered voters. There are no registered voters in the area to be annexed in Mountain View Estates annexation (ZCA2004-00003) or in the Alberta Rider/Summit Ridge annexation area (ZCA2005-00003). All of the registered voters in the Arlington Heights 3 (ZCA20005-00001) and Wilson Ridge (ZCA 2005-00002) annexation have consented to annexation.

HB 2722

3. HB 2722 (which has been enacted into law) withdraws the right of cities to veto formation of new cities within three miles of their borders. Some opponents of annexation have argued that the intent of this bill is that the wishes of citizens in the affected areas are respected.

   A. HB 2722 does not apply to annexations.

   B. The affected areas are the areas to be annexed. Two types of persons have interests in the affected areas – those who own property and those who reside there. All owners of all properties to be annexed, and all voters in areas to be annexed have consented to the annexation. No owner or resident in the areas to be annexed has indicated that they do not wish annexation.

SB 877

4. SB 877 (which has been enacted into law) has three major effects. One is that it limits the ability of the City of Beaverton to annex "islands" of territory surrounded by that City. The second effect is that it requires a majority vote in the territory to be annexed by means of an annexation plan under ORS Chapter 195. The third effect is to prohibit the annexation of certain types of industrial property without the consent of the owner.

   A. The provisions affecting only the City of Beaverton do not apply to the City of Tigard.

   B. None of the proposed annexations are "island" annexations, although an "island" is created by the Alberta Rider School/Summit Ridge annexation.

   C. The annexations are not annexation plan annexations and are not subject to ORS Chapter 195.

   D. The annexations are not of industrial land and are not the type of land that cannot be annexed without the consent of the owner. The City has the consent of all owners of all land being annexed.

Voluntary or Coerced Consents

5. Some persons argued that the consents are not valid because they were coerced.

   A. None of the people who provided consents stated they were coerced. Those who testified that the consents were coerced did not specify which persons were coerced. Several persons representing property owners (Tom Weber, John Marquart, Sean Foushee, and Al Jeck) testified orally and/or in writing that consents were voluntary and not coerced. The City Council finds that there is no evidence that any specific individual was coerced into consenting to annexation.

If any person who provided consents believed that the consents were coerced, it is likely that the person would have appeared at the hearing. The Council finds the testimony of Tom Weber, John Marquart, Sean Foushee and Al Jeck to be more persuasive than the evidence of those claiming coercion because the named individuals were in a position to know whether the consents were voluntary or coerced and those who claimed that the consents were coerced did not have personal knowledge regarding the consents. The Council concludes that none of the consents were coerced.

B. ORS 222.115 specifically authorizes contracts between a city and a landowner relating to the extraterritorial provision of service in which the landowner consents to annexation. The fact that the City requires a consent to annexation in return for a contract for the extraterritorial provision of service is explicitly authorized by statute and does not constitute coercion. The City provides planning and building inspection services extraterritorially and may require consents to annexation in order to provide those services.

C. ORS 222.175 recognizes that cities may solicit consents to annexation. The fact that a City seeks consents does not mean that they were coerced and does not invalidate the consents.

Consents To Annexation In Connection With A Land Use Proceeding

6. Some opponents argued that some of the consents were required in connection with land use proceedings, and the City cannot require consents to annexation in order to process a land use application or as a condition of a land use approval.

A. For consents that were provided in connection with a land use approval, the time to challenge the City's authority to impose the consents was during the land use process. In each case, the land use process has been completed and the appeal period has passed. The requirement to provide a consent to annexation can no longer be challenged.

B. None of the persons who provided consents in connection with land use proceedings have in any way challenged the consents or the requirement to provide the consents. To the contrary, some of them have expressly testified that they affirmatively desire that their properties be annexed to the City of Tigard.

General Concern For The Bull Mountain Area

7. Some opponents stated concerns related to the Bull Mountain area in general and to their property in unincorporated areas of Bull Mountain. Some of them argue that the proposed annexations should not proceed because of the negative vote when the Bull Mountain Annexation Plan was presented to the voters in the area to be annexed.

A. The rights and interests of the owners and registered voters in the areas proposed for annexation are recognized by statute. The statutes do not create a legally protected interest for other persons.

B. These annexations are different from the annexation plan presented to the voters. These annexations are property-specific annexations under ORS Chapter 222. The City and the annexation applicants are not requesting approval of an annexation plan. The rejection of an annexation plan under ORS Chapter 195 does not prevent later annexation of specific territory under a different annexation statute.

"Double Majority" Vote

8. Some opponents of the annexation argued that a "double majority" vote (a separately tabulated vote in the City and in the area to be annexed) is required.

A. A "double majority" vote is or will be required for annexation plans under ORS Chapter 195. However, for annexations under ORS Chapter 222, votes in the City are not required unless required by City charter or ordinance, and votes in the area to be annexed are not required if certain criteria are met. A vote in the area to be annexed is not required if all of the owners of all of the land and a majority of the electors in the area to be annexed, if any, consent to the annexation. ORS 222.125. The City Charter and Code do not require a vote within the City.

B. As to each of the annexations, the City has received the consents of all of the owners of all of the land. The City has also received the consents of all of the registered voters in each area that has registered voters. These annexations are not annexation plan annexations under ORS 195, so the double majority requirement does not apply. The City is not required to hold a vote in any of the territories to be annexed, either because there are no electors in the areas to be annexed or because the City has the consent of a majority of the electors in those areas.

"Islands" Of Unincorporated Areas Surrounded By The City

9. Some opponents argued that these annexations create islands of unincorporated areas surrounded by the City. They also note that the City may later annex those islands without consent of owners or electors.

A. There is no legal prohibition on the creation of islands. The City must consider annexation applications that create islands under applicable standards. While the Council must consider whether the borders created by an annexation are so irregular as to potentially cause problems with the provision of police services, the police department accepts these boundaries as being acceptable and not causing confusion for the provision of police services. The police department has provided written statements that they can provide services. The Council finds that

the boundaries are not irregular to the extent they create confusion in the provision of police services.

B. The City does have the authority to annex islands, but is aware that the statutory authority to annex islands may be withdrawn, as it has been withdrawn from one other city and from certain types of land. The possibility of a future annexation proceeding is not an applicable standard or criterion in deciding whether to approve these annexations.

Regular Boundaries

10. Several persons commented that the annexations will not result in a regular boundary.

A. The applicable standard is Comprehensive Plan Policy 10.1.2, which provides:

Approval of proposed annexations of land by the City shall be based on findings with respect to the following:

a. The annexation eliminate an existing "pocket" or "island of unincorporated territory; or

b. The annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the City;

c. The police department has commented on the annexation;

d. The land is located within the Tigard Urban Planning Area and is contiguous to the City boundary;

e. The annexation can be accommodated by the services listed in 10.1.1(a).

B. Policy 10.1.2 is complied with if either (1) subsection a or (2) subsections b through e are met. These annexations comply with subsections b through e. The annexation boundary will not make it difficult for the police in emergency situations to determine whether the parcel is within or without the City. The police department has commented on the annexation and stated that it is capable of providing service. All areas proposed for annexation are within the Tigard Urban Planning Area and are contiguous to the City. The services listed in 10.1.1(a) (water, sewer, drainage, streets, police and fire protection) can be provided to the areas to be annexed – the City and other responsible service providers have capacity to provide service to the areas to be annexed.

Individual Comments – Testimony at Hearing

Les and Ellen Godowski

11. The Godowskis argued that the annexations will also prevent certain areas from creating their own cities or annexing to King City.

    A. The City has no obligation to refrain from annexing territory based on the possibility that some other city may be incorporated in the area at some point in the future.

    B. All applicable plans and intergovernmental agreements that address urbanization or the provision of urban services designate Tigard as the City that will annex and/or provide urban services to the areas being annexed.

Charles Radley

12. Charles Radley argued that the annexations would violate *Dolan v. City of Tigard* and that there is no "essential nexus." Mr. Radley also provided a written document.

    A. *Dolan v. City of Tigard* applies only to cases in which the City exacts property from a property owner at the time of a land use approval. *Dolan* does not apply to annexations.

    B. To the extent the Mr. Radley is arguing that the City could not require the property owners to consent to annexation as a condition of land use approval, that challenge is too late. The land use approvals are final and cannot be collaterally challenged. Furthermore, Mr. Radley was not the applicant or a landowner in any of the land use cases and lacks standing to challenge conditions that have been accepted by the applicants.

    C. The "essential nexus" requirement is imposed on exactions by the *Nollan v. California Coastal Commission* case. Like *Dolan*, the case applies only to exactions at the time of land use approvals, not to annexations. To the extent that Mr. Radley is challenging conditions of approval in the previous land use cases, that challenge is too late, and Mr. Radley lacks standing to make the challenge.

    D. The document that Mr. Radley provided is an excerpt discussing the requirement, under Rhode Island law, that a building official must issue a building permit that meets the requirements of the building code. Rhode Island law concerning building officials is not relevant to any issue regarding these annexations. If Mr. Radley is attempting to argue that the City cannot require a consent to annexation, any requirement regarding consents to annexations by the City are imposed in the context of a land use proceeding. The City has more authority and more discretion in land use proceedings than in issuing building permits.

Julie Russell

13. In addition to issues raised by others, Ms. Russell claimed that the map included with the notice of annexation was inaccurate as to which areas are included within the City limits and which areas are outside the City limits. Ms. Russell argued that the City's process violated Comprehensive Plan Policies 2.1.1. and CDC 18.320.020. Ms. Russell stated dissatisfaction with the proposed zoning.

A. The maps provided with the notice were accurate. They showed the location of the properties being annexed and accurately showed areas within the city limits by a shaded yellow area. There is no requirement to provide a map with the notice of the annexation hearing. Even if there was some inaccuracy, the maps provided sufficient information to advise of the location of the properties to be annexed and their relationship to the City. The City provided notice in compliance with all applicable requirements. In the event that some person may have failed to receive notice, failure of a person to receive notice does not invalidate the notice, which was properly provided.

B. Comprehensive Plan Policy 2.1.1 provides: "The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process." This policy is not an approval standard or criterion for an annexation application. The City's land use regulations have been acknowledged, and those regulations provide the process, including citizen involvement, for considering land use applications. That process includes notice and a hearing, and the City provided notice and a hearing, as required by the CDC. Compliance with the acknowledged regulations demonstrates compliance with the Comprehensive Plan policies implemented by the regulations. Citizens, including Ms. Russell, have had the opportunity to be involved in process. The process of necessity works differently in a quasi-judicial land use process than in a legislative process.

C. CDC 18.320.020 provides:

18.320.020 Approval Process and Standards

A. Approval Process. Annexations shall be processed by means of a Type IV procedure, as governed by Chapter 18.390 using standards of approval contained in Subsection B2 below.

B. Approval Criteria. The decision to approve, approve with modification, or deny an application to annex property to the City shall be based on the following criteria:

1. All services and facilities are available to the area and have sufficient capacity to provide service for the proposed

annexation area; and

2. The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.

C. Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.

D. Conversion table. Table 320.1 summarizes the conversion of the County's plan and zoning designations to City designations which are most similar.

The City used a Type IV approval process. The City has capacity to provide all required services to the area to be annexed, and the applicable Comprehensive Plan Policies, including those in Chapter 10, have been satisfied. The properties being annexed already have City comprehensive plan and zoning designations, that have been adopted and imposed by the County. Ms. Russell specifically argued that the City lacks parks capacity in the area. However, the City has sufficient parks capacity throughout the City to provide service to its residents, including residents in the areas being annexed. The services listed in the Comprehensive Plan, water, sewer, storm sewer, streets, police and fire protection, are the essential services that must be available, and those services will be available to the newly annexed areas. Ms. Russell questioned the adequacy of the street system. The City Council finds that the street system is adequate to provide service and will remain adequate. If the properties are not annexed, they could still be developed consistent with the County zoning, which is the same as City zoning, so whether the properties are annexed or not does not affect the impact on the street system.

D. The areas to be annexed all have existing City zones that were established consistent with Table 320.1. The zoning is consistent with the Comprehensive Plan and applicable Community Development Code provisions.

Scott Miller

14. In addition to issues addressed in the "Issues Raised By More Than One Person" section of these findings, Mr. Miller stated a concern with an increase in taxes. Mr. Miller also argued that the consents received by the City are not consents.

    A. Mr. Miller does not own property being annexed. His property is outside the area proposed for annexation. His taxes will not increase as a result of the annexation. The property owners in the area to be annexed have consented to the annexation. Whether taxes may increase is not an applicable standard or criterion in deciding an annexation.

    B. For each of the annexations, the City has either the written consent of the property owners or a petition from the property owners to initiate the annexation. All are valid consents.

Lisa Hamilton Treick

15. In addition to issues address in the "Issues Raised By More Than One Person" section of these findings, Ms. Hamilton Treick argued that Measure 37 gives property owners rights that are violated by these annexations.

    A. Ms. Hamilton Treick does not own property that will be annexed by these annexations. All owners of property being annexed have consented to these annexations. The property owners or their representatives who testified expressly stated that they voluntarily consent to the annexations. One of them, Tom Weber, stated that he actively sought annexation to Tigard because of the value it brings to his property. Measure 37 is not an applicable standard or criterion for annexation.

16. Ms. Hamilton Treick also argued that the City has no authority to condition land use approvals or acceptance of land use applications on a consent to annexation.

    A. This is a challenge to final land use decisions that were not been appealed within the time allowed by statute. Those decisions cannot be collaterally attacked.

    B. The various agreements with the County and other urban service providers, including the Urban Services Intergovernmental Agreement and Tigard Urban Service Agreement, anticipate that the City will provide planning services and will ultimately annex Tigard's urban service area. Requiring annexation is not inconsistent with those agreements. Urban Service Agreement Section I.D provides that the City shall endeavor to annex certain areas, including all areas currently proposed for annexation. Requiring annexation consents effectuates this provision of the Urban Service Agreement. The Urban Services Intergovernmental Agreement gives Tigard all land use decision-making authority

over the area to be annexed. Land use authority includes the authority to impose conditions. The City has the authority to impose a condition of approval requiring consent to annexation when it receives a land use application for a property outside the City.

Individual Comments – Post-Hearing Written Submissions

Julie Russell

17. Ms. Russell again discussed general opposition to annexation in the Bull Mountain area, HB 2484, SB 887, Comprehensive Plan Policies 2.1.1.and 10.1.2, and CDC 18.320.020. The above findings address those arguments.

18. Ms. Russell also argues that the zoning is wrong and inconsistent with the Bull Mountain Community Plan. The areas have all been rezoned by the County and the zoning being applied is the zoning required by CDC 18.320. Furthermore, as demonstrated in the written testimony of John Marquart, there is little or no practical difference between Washington County R-6 and Tigard R-7 zoning, as applied.

19. Ms. Russell argues that not everyone who was entitled to receive notice actually received notice. The City provided notice as required by applicable regulations. While it is possible that some persons did not receive notice, the City complies with the notice requirements.

20. Ms. Russell complains about possible effects on other service providers. The City has not received any negative comments from other service providers. All service providers in the area have agreed that the area being annexed will be annexed to Tigard. Services will be provided as agreed to in the Urban Services Agreements entered into by the City and other service providers.

21. Ms. Russell argues that the annexation will interfere with the orderly and economic provision of public facilities and services. However, her argument appears to be that services can be provided without annexation. That does not mean that annexation will disrupt or interfere with service provision. The agreements between the service providers will ensure orderly and economic provision of services.

22. Ms. Russell argues that the Alberta Rider School property should not be annexed. None of her arguments relate to any applicable standard or criterion.

23. Ms. Russell opposes the Summit Ridge annexation as non-contiguous. The Summit Ridge area being annexed will be contiguous with the City on annexation.

24. Ms. Russell objects to the Annexation of Arlington Heights 3 on the grounds that the annexation will cause annexation to a homeowners association. That argument does not related to any applicable standard or criterion. Participation in a homeowner's association is a matter of contract between the parties and unrelated to a City's authority

to annex. Ms Russell also argues that the City cannot annex only part of a subdivision. No applicable standard or criterion prohibits annexation of part of a subdivision. Furthermore, Arlington Heights 3 is a separate subdivision from Arlington Heights 1 and 2.

LaVelle and Marie Day

25. The Days object to the annexation on the grounds that the annexation may interfere with efforts to annex to King City or to create a new city. This argument does not relate to any applicable criterion or standard. None of the Days' other arguments are based on applicable standards or criteria.

Jackie and Gary Kisling

26. The Kislings raise issues related to HB 2484 and HB 2722. Those bills are addressed in the above findings.

Henry Kane

27. Mr. Kane makes arguments against island annexations. None of the annexations are island annexations.

Lisa Hamilton-Treick and Tom Treick

28. Ms. Hamilton-Treick and Mr. Treick oppose the process in which the hearings on four annexations were combined as causing hardship on those who wish to appeal. Even if the hearings had not been combined, the hearings could have been, and most likely would have been held at the same meeting. Therefore, the appeals would have all been due at the same time. Combining the hearings allowed people to state their objections a single time so as to avoid multiple repeated testimony. All persons were given a full opportunity to address any issues related to any of the four annexations.

29. They also object to the boundaries as being irregular and question the voluntariness of the consents. These issues are addressed above.

30. They also oppose the transfer of Traffic Impact Fees to Tigard's TIF accounts. That is not a relevant issue and does not relate to any applicable standard or criterion.

Philip E. Decker

31. Mr. Decker opposes the annexations as not being contiguous. No property being annexed will be separated from the City by any intervening unincorporated territory. The annexations are of contiguous property.

32. Mr. Decker argues that ORS 222.115 allows annexation contracts only for contiguous parcels. ORS 222.115 does not require that property be contiguous at the time an

annexation contract is signed. One purpose of ORS 222.is to allow properties that are not contiguous to consent to annexation so that they can receive urban services immediately and be annexed later when intervening properties annex. The contiguity requirement applies only when the annexation becomes effective.

33. Mr. Decker argues that the areas being annexed are irregularly shaped. The shape of the area being annexed is not an issue.

34. Mr. Decker argues that previous annexations were improper. The previous annexations are final and have not been challenged. They cannot be collaterally attacked at this time.

Comments In Support

35. After the hearing, the City received several written comments in support of the proposed annexations, including statements from Sean Foushee, on behalf of the applicants for the Mountain View Estates, from John Marquart on behalf of the applicant for the Wilson Ridge annexation, and from Tom Weber, on behalf of the owners of the Arlington Heights 3 property, all of whom stated that the annexation applications were voluntary. Mr. Marquart and Mr. Weber addressed other issues, strongly supporting the annexations of their respective areas.

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CITY OF TIGARD, OREGON

ORDINANCE NO. 2005-_____

AN ORDINANCE ANNEXING 16.97 ACRES, APPROVING ARLINGTION HEIGHTS 3 ANNEXATION (ZCA2005-00001), AND WITHDRAWING PROPERTY FROM THE TIGARD WATER DISTRICT, WASHINGTON COUNTY ENHANCED SHERIFF'S PATROL DISTRICT, WASHINGTON COUNTY URBAN ROADS MAINTENANCE DISTRICT, WASHINGTON COUNTY STREET LIGHTING DISTRICT #1, AND THE WASHINGTON COUNTY VECTOR CONTROL DISTRICT.

WHEREAS, the City of Tigard is authorized by ORS 222.120(4)(B) and 222.170 to initiate an annexation upon receiving consent in writing from a majority of the electors registered in the territory proposed to be annexed and written consent from owners of more than half the land in the territory proposed to be annexed; and

WHEREAS, the City of Tigard is authorized by ORS 222.120(5) and 222.520 to withdraw properties which currently lie within the boundary of the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District upon completion of the annexation; and

WHEREAS, the Tigard City Council held a public hearing on August 9, 2005 to consider the annexation of three (3) parcels of land consisting of 16.97 acres and withdrawal of said property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, the City Council left the record open for written submissions for an additional seven days after the hearing on August 9, 2005 and allowed a further seven days on August 23, 2005 for submission of responses to new evidence submitted during that time, as provided by ORS 197.763(6)(c); and

WHEREAS, pursuant to ORS 222.520(2) the City is liable to the Water District for certain debt obligations, however, in this instance the Water District has no debt for the City to assume, therefore, no option regarding the assumption of debt needs to be made; and

WHEREAS, pursuant to Metro 3.09, ORS 222.120 and 222.524, notice was given and the City held a public hearing on the issue of the annexation into the City and withdrawal of the annexed property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, pursuant to ORS 222.524, the City must declare the withdrawal of annexed properties from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District by Ordinance; and

WHEREAS, the Tigard Development Code states that upon annexation, the zone is automatically changed to the City zoning most closely conforming to the County zoning; and

WHEREAS, the current zoning district is R-7, an existing City zone that has been adopted by the County and the zoning after annexation would remain R-7 so that no zone change is necessary, and by annexation the Comprehensive Plan of the City of Tigard goes into effect; and

WHEREAS, the annexation has been processed in accordance with the requirements of Metro 3.09 and has been reviewed for compliance with the Tigard Community Development Code and the Comprehensive Plan and the annexation substantially addresses the standards in Metro 3.09 regulating annexations; and

WHEREAS, the City Council has carefully considered the testimony at the public hearing and the written materials submitted after the hearing and determined that withdrawal of the annexed properties from the applicable service districts is in the best interest of the City of Tigard.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The Council adopts the staff report and the document entitled "Supplemental Finding Concerning Compliance with ORS Chapter 222" as findings. In addition, Council adopts the document entitled "Findings in Response to Comments" as additional findings of fact.

SECTION 2: The Tigard City Council hereby annexes the parcels described in the attached **Exhibit "A"** and shown in **Exhibit "B"** and withdraws said parcels from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District.

SECTION 3: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor and posting by the City Recorder.

SECTION 4: City staff is directed to take all necessary measures to implement the annexation, includingfiling certified copies of the Ordinance with Metro for administrative processing, filing with state and county agencies as required by law, and providing notice to utilities.

SECTION 5: Pursuant to ORS 222.120(5), the effective date of the withdrawal of the property from the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District shall be the effective date of this annexation.

SECTION 6: Pursuant to ORS 222.465, the effective date of the withdrawal of this property from the Tigard Water District shall be July 1, 2006.

SECTION 7: In accordance with ORS 222.180, the annexation shall be effective upon filing with the Secretary of State.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2005.

_____
Cathy Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2005.

_____
Craig Dirksen, Mayor

Approved as to form:

_____
City Attorney

_____
Date

EXHIBIT A

Arlington Heights 3
ZCA2005-00001

A tract of land situated in the Section 9 & 10, Township 2 South Range 1 West Willamette Meridian described as follows:

Beginning at the southeast corner of Tract "C" of the subdivision plat of Arlington Heights No. 2 which is on the east line of Section 9; thence S 01° 43' 36" W, along said east line, a distance of 248.13 feet; thence S 88° 16' 24" E, leaving said east line, a distance of 171.29 feet; thence S 01° 43' 36" W a distance of 629.34 feet to the north right of way of SW Beef Bend Road and a point on a non-tangent curve to the left; thence along said curve to the left with a radius of 858.00 feet, a central angle of 18° 45' 39" (a chord which bears S 54° 22'14" W,279.69 feet) and a length of 280.94 feet to a point of tangency; thence S 44° 59' 24" W, along said north right-of-way, a distance of 13.10 feet; thence N 01° 43' 36" E a distance of 217.45 feet; thence N 88° 59' 02" W a distance of 591.22 feet to the east line of Summit Ridge subdivision; thence N 02° 02' 19" E a distance of 109.42 feet; thence N 01° 28' 06" E a distance of 173.28 feet; thence N 02° 14' 47" E a distance of 134.59 feet; thence N 00° 00' 56" W a distance of 130.41 feet; thence N 01° 54' 35" E a distance of 389.30 feet; thence N 01° 11' 42" E a distance of 210.05 feet to the south line of Arlington Heights NO. 2; thence along said south linie the following7 courses; thence S 37° 29' 33" E a distance of 140.72 feet; thence S 41° 09' 15" E a distance of 134.27 feet; thence S 71° 02' 09" E a distance of 105.57 feet; thence N 84° 57' 06" E a distance of 113.51 feet; thence S 81° 44' 42" E a distance of 69.97 feet; thence S 07° 15' 19" E a distance of 73.53 feet; thence S 90° 00' 00" E distance of 180.00 feet to the point of beginning.

EXHIBIT B

Arlington Heights 3
ZCA2005-00001

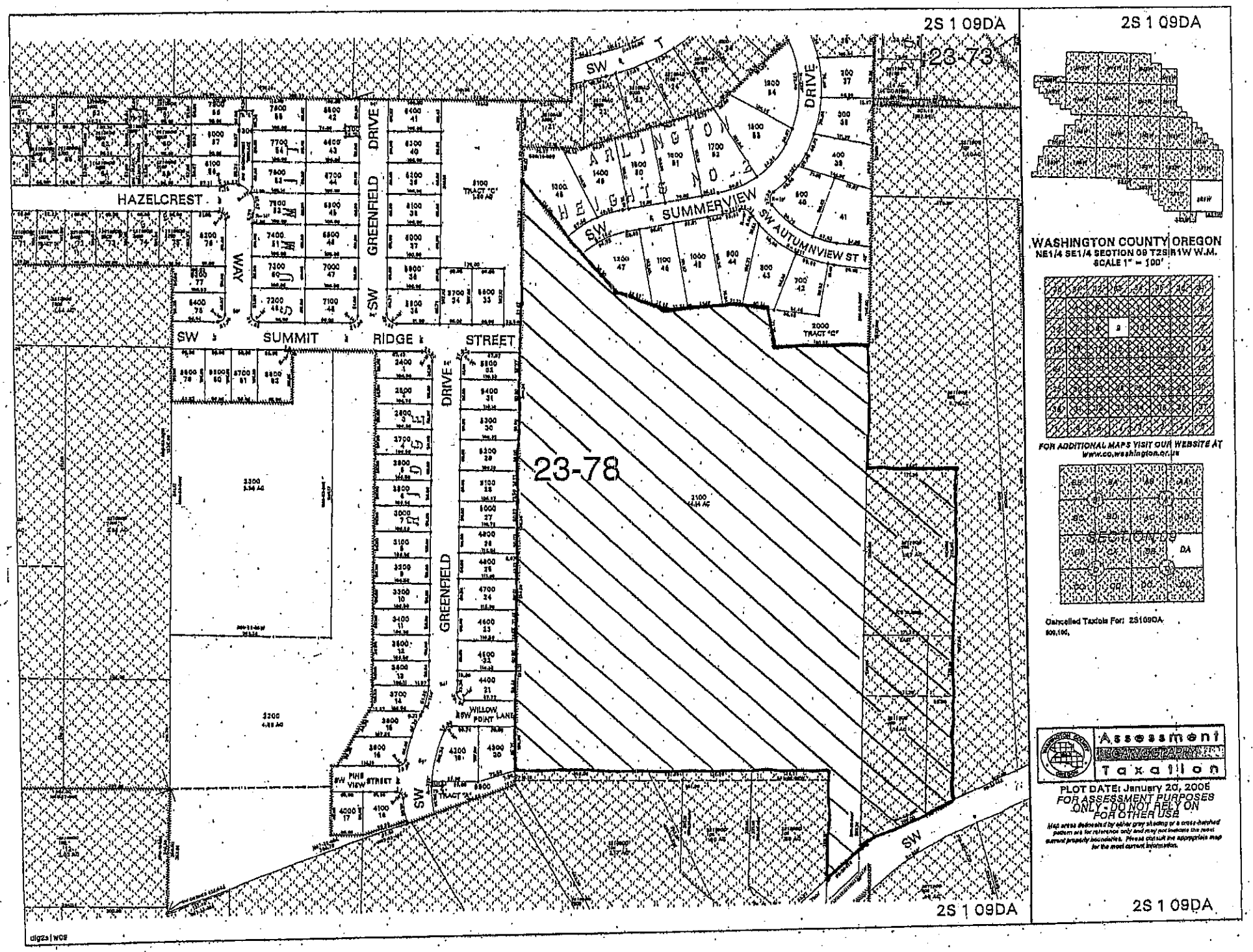
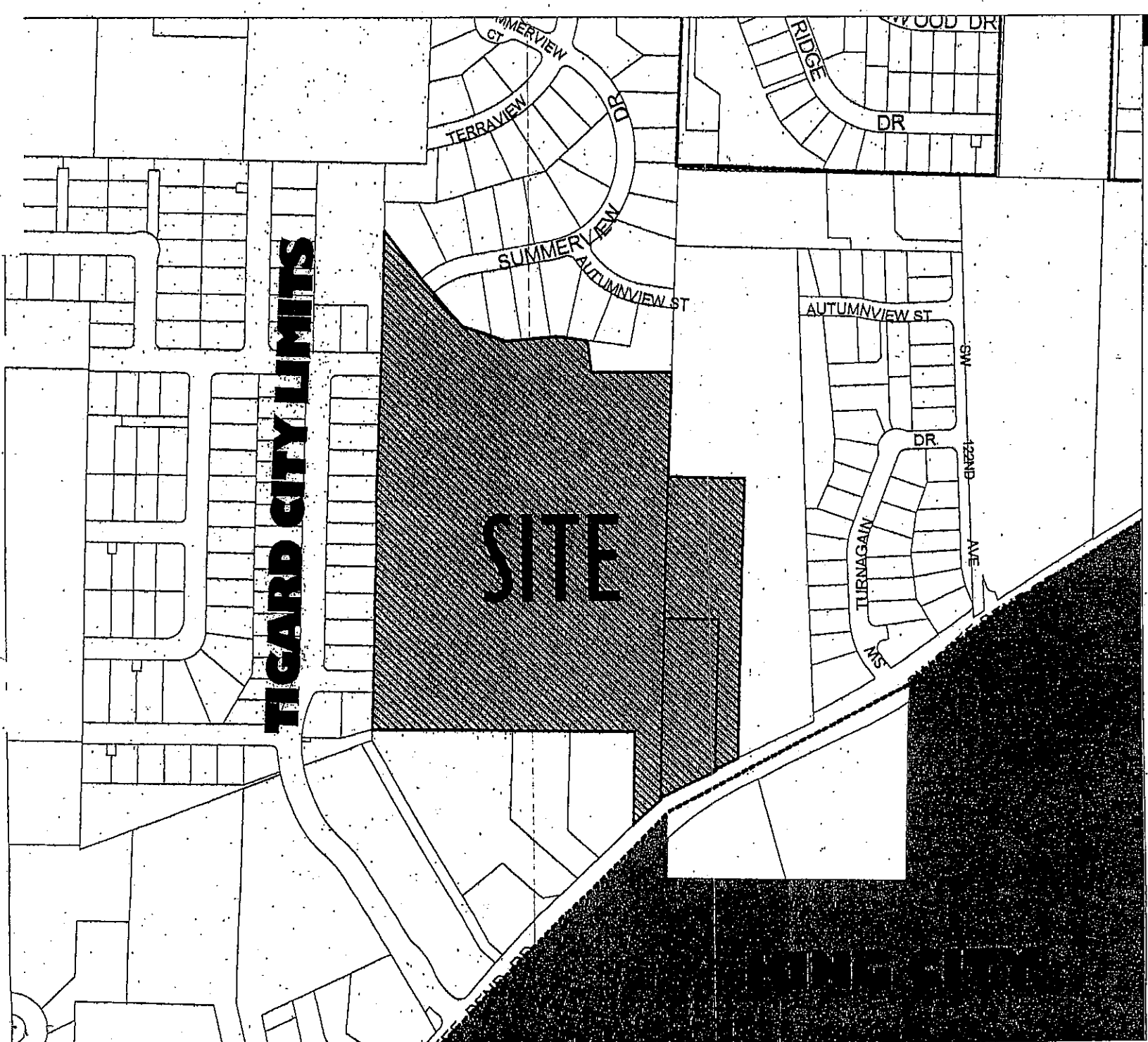


EXHIBIT C



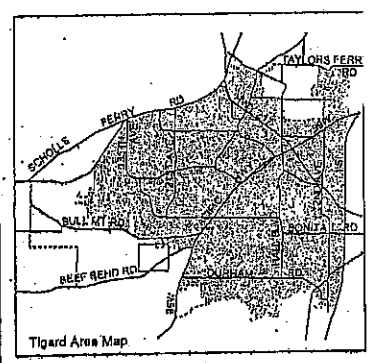
CITY of TIGARD

GEOGRAPHIC INFORMATION SYSTEM

VICINITY MAP

ZCA2005-00001

ARLINGTON HEIGHTS ANNEXATION



N

0 100 200 300 400 Feet

1" = 310 feet

City of Tigard

Information on this map is for general location only and should be verified with the Development Services Division
13125 SW Hall Blvd
Tigard, OR 97223
(503) 639-4171
http://www.ci.tigard.or.us

Agenda Item: 7
Hearing Date: August 9, 2005 7:30 PM

STAFF REPORT TO THE CITY COUNCIL FOR THE CITY OF TIGARD, OREGON

CITY OF TIGARD
Community Development
Shaping A Better Community

SECTION I. APPLICATION SUMMARY

FILE NAME: WILSON RIDGE ANNEXATION

CASE NO.: Zone Change Annexation (ZCA) ZCA2005-00002

AGENT: Alpha Community Development
Attn: Jerry Palmer
9600 SW Oak Street, Suite 230
Portland, OR 97223

OWNER: Rickie and Linda Graham
13400 SW Bull Mountain Rd
Tigard, OR 97224

PROPOSAL: The applicant has applied for annexation of 2.68 acres into the City of Tigard.

CURRENT ZONING DESIGNATION: R-7, Medium Density Residential.

EQUIVALENT CITY ZONING DESIGNATION: R-7, Medium Density Residential. The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of 10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.

LOCATION: 13350 and 13400 SW Bull Mountain Road,
WCTM 2S109AC, Tax Lots 100 and 200

APPLICABLE REVIEW CRITERIA: Community Development Code Chapters 18.320 and 18.390; Comprehensive Plan Policies 2 and 10; Metro Code Chapter 3.09; and ORS Chapter 222.

SECTION II. STAFF RECOMMENDATION

Staff recommends that the Council find that the proposed annexation will not adversely affect the health, safety and welfare of the City. Therefore, staff recommends **APPROVAL** of the annexation by adoption of the attached ordinance.

SECTION III. BACKGROUND INFORMATION

Site Information and Proposal Description:
The applicant, Alpha Community Development, has applied for subdivision review for which a decision for approval is pending but has not yet become effective. The subdivision is tentatively named Wilson Ridge. A standard condition of approval for subdivision proposals on property that borders City limits within the Urban Services Intergovernmental Agreement area is that the property annex prior to final plat approval. There is no requirement that an applicant or property owner wait until receiving land use approval to annex the property. A parcel that is contiguous to the city limits may apply for annexation at any time. The total area represented in this annexation request is 2.68 acres and is contiguous to the present city limits along the western property boundary.

Vicinity Information:
The subject parcels are located at the southwest corner of SW 133rd and Bull Mountain Road.

SECTION IV. APPLICABLE REVIEW CRITERIA AND FINDINGS

The relevant criteria in this case are Tigard Comprehensive Plan Policies 2.1.1, 10.1.1, 10.1.2, and; Tigard Community Development Code Chapter 18.320.

Staff has determined that the proposal is consistent with the relevant policies of the Comprehensive Plan based on the following findings:

Comprehensive Plan
Policy 2.1.1: The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process.

This Policy requires an ongoing citizen involvement program. Interested parties and surrounding property owners within 500 feet have been notified of the public hearing and notice of the hearing has been published in a newspaper of general circulation. The site has been posted since June 23, 2005. There have been a number of opportunities for citizens to be involved in the decision making process, including the review of the subdivision request.

Policy 10.1.1: The City shall review each of the following services as to adequate capacity, or such services to be made available, to serve the parcel if developed to the most intense use allowed, and will not significantly reduce the level of services available to developed and undeveloped land within the City of Tigard. The services are: water, sewer, drainage, streets, police, and fire protection.

This policy requires adequate service capacity delivery to annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. While the subdivision approval is complete but not yet effective, in the subdivision review staff found that the adjacent streets had adequate capacity, sewers will be extended from the Alberta Rider School site, storm drainage is conveyed through a new pipe to the Alberta Rider project, and water is provided by an existing 12" water line in Bull Mountain Road. The subdivision approval is contingent on the applicant providing these services prior to recording the final plat. This policy is satisfied.

If required by an adopted capital improvements program ordinance, the applicant shall sign and record with Washington County a nonremonstrance agreement regarding the

following: The formation of a local improvement district (L.I.D.) for any of the following services that could be provided through such a district. The extension or improvement of the following: water, sewer, drainage and streets. The formation of a special district for any of the above services or the inclusion of the property into a special service district for any of the above services.

No L.I.D's have been required with the subject parcels or subdivision approval. All public infrastructure listed above will have to be completed before the land is subdivided by a final subdivision plat. The costs of providing such services will be borne by the applicant. Since there are no capital improvements identified for this site, no nonremonstrance agreement is necessary.

The City shall provide urban services to areas within the Tigard urban planning area or with the urban growth boundary upon annexation.

The City of Tigard has an urban services agreement with Washington County for those areas within the City's urban growth boundary. This policy has been complied with.

Policy 10.1.2: approval of proposed annexations of land by the city shall be based on findings with respect to the following: the annexation eliminates an existing "pocket" or "island" of unincorporated territory; or the annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the city; the police department has commented upon the annexation; the land is located within the Tigard urban planning area and is contiguous to the city boundary; the annexation can be accommodated by the services listed in 10.1.1(a).

This Policy pertains to boundary criteria for annexations. The proposed annexation will not eliminate an existing "pocket" or "island" of unincorporated territory; however the annexation will also not create an irregular boundary making it difficult for police to determine whether a particular parcel is in or outside the city. The proposed annexation will incorporate the entire subdivision boundary for Wilson Ridge. There is a long 10 foot wide "pole" that runs south from the parcels. This is a remnant of an easement for access that benefited other properties further south. That easement has been vacated on the subject parcel, so essentially what remains is a long strip of land. While odd in its configuration, the annexation is simply including the entire extent of the parcel as this policy requires. There is no attempt to include a cherry stem (typically achieved by annexing roads) with this subject request. All future lots within this subdivision will be inside city limits. The police department has commented on the proposed annexation request and did not voice any objections. The land is within the Urban Services Area inside the Urban Growth Boundary and is bordered by the city limits on the northern side. Services to the subject property are addressed above. This policy is met.

<u>Community Development Code</u>
<u>Section 18.320.020:</u> This Section addresses approval standards for annexation proposals:

All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area;

Adequate service (water, sewer, drainage, streets, police, and fire protection) capacity is available to serve the annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. Additionally, the adequacy and availability of services to serve the intended R-7 Medium Density residential development will be reviewed and conditioned as necessary as part of the Wilson Ridge subdivision review. Therefore, this policy is satisfied.

The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.

Applicable Comprehensive Plan policies have been addressed above. The implementing ordinance provisions of ORS 222, TCDC 18.390, and Metro Code 3.09 were followed in processing this annexation request. Conformance with other development code provisions will be addressed at the time the property develops. This standard has been met.

Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or/zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.

The subject property is in the Urban Service Area and is zoned R-7 medium density residential, pursuant to the City of Tigard's Urban Services Intergovernmental Agreement. The R-7 zoning designation is consistent with the original Washington County's R-6 zoning designation as shown in the table below. The City's zoning was adopted by the County with the City's R-7 zoning district when the Intergovernmental Agreement was signed between the county and the city to provide city planning services to this area. Therefore, the property does not need to be rezoned upon annexation. According to Section 18.320.020.C, the City's Comprehensive plan and zoning designations occur automatically and concurrently with the annexation.

Conversion table. Table 320.1 summarizes the conversion of the County's plan and zoning designations to City designations which are most similar.

TABLE 320.1
CONVERSION TABLE FOR COUNTY AND CITY PLAN AND ZONING DESIGNATIONS

Washington County Land Use Districts/Plan Designation	City of Tigard Zoning	City of Tigard Plan Designation
R-5 Res. 5 units/acre	R-4.5 SFR 7,500 sq. ft.	Low density 1-5 units/acre
R-6 Res. 6 units/acre	R-7 SFR 5,000 sq. ft.	Med. density 6-12 units/acre
R-9 Res. 9 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-12 Res. 12 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-15 Res. 15 units/acre	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
R-24 Res. 24 units/acres	R-25 Multi-family 25 units/acre	Medium-High density 13-25 units/acre
Office Commercial	C-P Commercial Professional	CP Commercial Professional
NC Neighborhood Commercial	CN Neighborhood Commercial	CN Neighborhood Commercial
CBD Commercial Business District	CBD Commercial Business District	CBD Commercial Business District
GC General Commercial	CG General Commercial	CG General Commercial
IND Industrial	I-L Light Industrial	Light Industrial

Metro

Metro 3.09 requires the additional standards to be addressed in annexation decisions, in addition to the local and state review standards. These are addressed and satisfied as discussed below:

Consistency with the directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;

The processing has been done consistent with applicable Urban Service Provider agreements.

Consistency with directly applicable provisions of urban planning or other agreement, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;

The process required by the Development Code and Comprehensive Plan is consistent with the Urban Planning Agreement for annexations.

Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;

This has been discussed previously in this report and, as discussed, this criterion is satisfied.

Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plans;

Because the Development Code has been amended to comply with applicable Metro functional plan requirements, by complying with the Development Code and Comprehensive Plan, the annexation is consistent with the applicable Functional Plan and the Regional Framework plan.

Whether the proposed changes will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;

The proposed annexation will not interfere with the provision of public facilities or services because it is adjacent to existing city limits and services, and the delivery of those services was anticipated as part of the urban services agreement which is intended to promote the timely, orderly, and economic delivery of those public facilities and services.

If the proposed boundary change is for annexation of territory to Metro, a determination by Metro Council that the territory should be included in the Urban Growth Boundary shall be the primary criterion for approval;

The subject property is already within the Metro boundaries.

Consistency with other applicable criteria for the boundary change in question under state and local law.

Consistency with other applicable criteria has been discussed previously in this report.

SECTION V. AGENCY COMMENTS

Washington County Department Of Land Use & Transportation, Verizon, Qwest Communications, Northwest Natural Gas, Beaverton School District #48, Comcast Cable Corporation, Portland General Electric, Metro Area Communications, Cleanwater Services, Metro Land Use & Planning, Tualatin Hills Park & Rec. District, Tualatin Valley Water District, Tualatin Valley Fire & Rescue, and Tigard/Tualatin School District 23J have had the opportunity to review the proposal and have offered no objections.

BASED ON THE FINDINGS INDICATED ABOVE, PLANNING STAFF RECOMMENDS APPROVAL OF ZONE CHANGE ANNEXATION (ZCA) 2005-00002 – WILSON RIDGE ANNEXATION.

PREPARED BY: Morgan Tracy
Associate Planner

July 28, 2005
DATE

APPROVED BY: Richard Bewersdorff
Planning Manager

July 28, 2005
DATE

SUPPLEMENTAL FINDINGS
CONCERNING COMPLIANCE WITH ORS CHAPTER 222
ZCA2005-00002 – Wilson Ridge

The City is proceeding with this annexation without an election in the territory to be annexed under ORS 222.125. That statute provides:

> The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.

The Council finds:

1. There are two owners of the two properties that are in the territory proposed for annexation under ZCA2005-00002. Both owners have consented in writing to annexation to the City of Tigard and those consents have been duly filed with the City.

2. According to County voter registration information, two registered voters reside in the territory to be annexed under ZCA2005-00002. The City has received signed consents to annexation from both voters and therefore has the consents of a majority of the electors in the territory to be annexed.

3. Because the City has written consent of all owners of land and the majority of the electors in the territory proposed to be annexed under ZCA2005-00002, the City may proceed with annexation of that territory without a vote in the territory to be annexed, pursuant to ORS 222.125.

FINDINGS IN RESPONSE TO COMMENTS

At the August 9, 2005, the City Council received testimony from various persons regarding four proposed annexations. The Council allowed all parties until August 16 to submit additional written information. This document sets out the City's findings on the legal and factual issues raised by the testimony and written submissions. The Council received a request to reopen the record to allow a response to the post-hearing written submissions and allowed until August 30 for persons to raise new issues relating to the new testimony, as provided by ORS 197.763(6)(c) and 197.763(7). This document sets out the City's findings on the legal and factual issues raised by the testimony and written submissions.

1. After the Council allowed additional time to raise new issues in response to new evidence submitted in the post-hearing written submissions, the City received two submissions, both e-mails sent by Julie Russell. Neither of those submissions raises new issues because all issues presented in her e-mails had been raised previously. Furthermore, neither of the submissions addresses new evidence submitted after the close of the oral hearing, but simply contain further argument on the same factual and legal issues she and other opponents had raised in her earlier submissions. Therefore, neither are proper submissions under ORS 197.763(6)(c) and 197.763(7).

Issues Raised By More Than One Person

HB 2484

2. Some people testified that House Bill 2484 (which has been enacted into law) either prevents the City from approving these annexations or demonstrates a legislative intent that a vote is required in any area to be annexed. House Bill 2484 is straightforward. It amends ORS195.215, to make it clear that "annexation plans" under ORS Chapter 195 must be approved both by a majority of voters in the territory to be annexed and by a majority within the City.

   A. HB 2484 does not apply to the annexations being considered by the City because HB 2484 applies only to annexation plans under ORS Chapter 195, and the annexations before the City do not involve annexation plans or ORS Chapter 195. They are annexations under ORS Chapter 222, in particular ORS 222.125. HB 2484, even if it were effective, would not apply to or affect these annexations.

   B. HB 2484 requires a separate vote in the area to be annexed for annexation plan annexations. However, requiring a vote in the area to be annexed would be a meaningless and futile act for areas in which there are no registered voters. There are no registered voters in the area to be annexed in Mountain View Estates annexation (ZCA2004-00003) or in the Alberta Rider/Summit Ridge annexation area (ZCA2005-00003). All of the registered voters in the Arlington Heights 3 (ZCA20005-00001) and Wilson Ridge (ZCA 2005-00002) annexation have consented to annexation.

HB 2722

3. HB 2722 (which has been enacted into law) withdraws the right of cities to veto formation of new cities within three miles of their borders. Some opponents of annexation have argued that the intent of this bill is that the wishes of citizens in the affected areas are respected.

   A. HB 2722 does not apply to annexations.

   B. The affected areas are the areas to be annexed. Two types of persons have interests in the affected areas – those who own property and those who reside there. All owners of all properties to be annexed, and all voters in areas to be annexed have consented to the annexation. No owner or resident in the areas to be annexed has indicated that they do not wish annexation.

SB 877

4. SB 877 (which has been enacted into law) has three major effects. One is that it limits the ability of the City of Beaverton to annex "islands" of territory surrounded by that City. The second effect is that it requires a majority vote in the territory to be annexed by means of an annexation plan under ORS Chapter 195. The third effect is to prohibit the annexation of certain types of industrial property without the consent of the owner.

   A. The provisions affecting only the City of Beaverton do not apply to the City of Tigard.

   B. None of the proposed annexations are "island" annexations, although an "island" is created by the Alberta Rider School/Summit Ridge annexation.

   C. The annexations are not annexation plan annexations and are not subject to ORS Chapter 195.

   D. The annexations are not of industrial land and are not the type of land that cannot be annexed without the consent of the owner. The City has the consent of all owners of all land being annexed.

Voluntary or Coerced Consents

5. Some persons argued that the consents are not valid because they were coerced.

   A. None of the people who provided consents stated they were coerced. Those who testified that the consents were coerced did not specify which persons were coerced. Several persons representing property owners (Tom Weber, John Marquart, Sean Foushee, and Al Jeck) testified orally and/or in writing that consents were voluntary and not coerced. The City Council finds that there is no evidence that any specific individual was coerced into consenting to annexation.

If any person who provided consents believed that the consents were coerced, it is likely that the person would have appeared at the hearing. The Council finds the testimony of Tom Weber, John Marquart, Sean Foushee and Al Jeck to be more persuasive than the evidence of those claiming coercion because the named individuals were in a position to know whether the consents were voluntary or coerced and those who claimed that the consents were coerced did not have personal knowledge regarding the consents. The Council concludes that none of the consents were coerced.

B. ORS 222.115 specifically authorizes contracts between a city and a landowner relating to the extraterritorial provision of service in which the landowner consents to annexation. The fact that the City requires a consent to annexation in return for a contract for the extraterritorial provision of service is explicitly authorized by statute and does not constitute coercion. The City provides planning and building inspection services extraterritorially and may require consents to annexation in order to provide those services.

C. ORS 222.175 recognizes that cities may solicit consents to annexation. The fact that a City seeks consents does not mean that they were coerced and does not invalidate the consents.

Consents To Annexation In Connection With A Land Use Proceeding

6. Some opponents argued that some of the consents were required in connection with land use proceedings, and the City cannot require consents to annexation in order to process a land use application or as a condition of a land use approval.

A. For consents that were provided in connection with a land use approval, the time to challenge the City's authority to impose the consents was during the land use process. In each case, the land use process has been completed and the appeal period has passed. The requirement to provide a consent to annexation can no longer be challenged.

B. None of the persons who provided consents in connection with land use proceedings have in any way challenged the consents or the requirement to provide the consents. To the contrary, some of them have expressly testified that they affirmatively desire that their properties be annexed to the City of Tigard.

General Concern For The Bull Mountain Area

7. Some opponents stated concerns related to the Bull Mountain area in general and to their property in unincorporated areas of Bull Mountain. Some of them argue that the proposed annexations should not proceed because of the negative vote when the Bull Mountain Annexation Plan was presented to the voters in the area to be annexed.

A. The rights and interests of the owners and registered voters in the areas proposed for annexation are recognized by statute. The statutes do not create a legally protected interest for other persons.

B. These annexations are different from the annexation plan presented to the voters. These annexations are property-specific annexations under ORS Chapter 222. The City and the annexation applicants are not requesting approval of an annexation plan. The rejection of an annexation plan under ORS Chapter 195 does not prevent later annexation of specific territory under a different annexation statute.

"Double Majority" Vote

8. Some opponents of the annexation argued that a "double majority" vote (a separately tabulated vote in the City and in the area to be annexed) is required.

A. A "double majority" vote is or will be required for annexation plans under ORS Chapter 195. However, for annexations under ORS Chapter 222, votes in the City are not required unless required by City charter or ordinance, and votes in the area to be annexed are not required if certain criteria are met. A vote in the area to be annexed is not required if all of the owners of all of the land and a majority of the electors in the area to be annexed, if any, consent to the annexation. ORS 222.125. The City Charter and Code do not require a vote within the City.

B. As to each of the annexations, the City has received the consents of all of the owners of all of the land. The City has also received the consents of all of the registered voters in each area that has registered voters. These annexations are not annexation plan annexations under ORS 195, so the double majority requirement does not apply. The City is not required to hold a vote in any of the territories to be annexed, either because there are no electors in the areas to be annexed or because the City has the consent of a majority of the electors in those areas.

"Islands" Of Unincorporated Areas Surrounded By The City

9. Some opponents argued that these annexations create islands of unincorporated areas surrounded by the City. They also note that the City may later annex those islands without consent of owners or electors.

A. There is no legal prohibition on the creation of islands. The City must consider annexation applications that create islands under applicable standards. While the Council must consider whether the borders created by an annexation are so irregular as to potentially cause problems with the provision of police services, the police department accepts these boundaries as being acceptable and not causing confusion for the provision of police services. The police department has provided written statements that they can provide services. The Council finds that

the boundaries are not irregular to the extent they create confusion in the provision of police services.

B. The City does have the authority to annex islands, but is aware that the statutory authority to annex islands may be withdrawn, as it has been withdrawn from one other city and from certain types of land. The possibility of a future annexation proceeding is not an applicable standard or criterion in deciding whether to approve these annexations.

Regular Boundaries

10. Several persons commented that the annexations will not result in a regular boundary.

A. The applicable standard is Comprehensive Plan Policy 10.1.2, which provides:

Approval of proposed annexations of land by the City shall be based on findings with respect to the following:

a. The annexation eliminate an existing "pocket" or "island of unincorporated territory; or

b. The annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the City;

c. The police department has commented on the annexation;

d. The land is located within the Tigard Urban Planning Area and is contiguous to the City boundary;

e. The annexation can be accommodated by the services listed in 10.1.1(a).

B. Policy 10.1.2 is complied with if either (1) subsection a or (2) subsections b through e are met. These annexations comply with subsections b through e. The annexation boundary will not make it difficult for the police in emergency situations to determine whether the parcel is within or without the City. The police department has commented on the annexation and stated that it is capable of providing service. All areas proposed for annexation are within the Tigard Urban Planning Area and are contiguous to the City. The services listed in 10.1.1(a) (water, sewer, drainage, streets, police and fire protection) can be provided to the areas to be annexed – the City and other responsible service providers have capacity to provide service to the areas to be annexed.

Individual Comments – Testimony at Hearing

Les and Ellen Godowski

11. The Godowskis argued that the annexations will also prevent certain areas from creating their own cities or annexing to King City.

    A. The City has no obligation to refrain from annexing territory based on the possibility that some other city may be incorporated in the area at some point in the future.

    B. All applicable plans and intergovernmental agreements that address urbanization or the provision of urban services designate Tigard as the City that will annex and/or provide urban services to the areas being annexed.

Charles Radley

12. Charles Radley argued that the annexations would violate *Dolan v. City of Tigard* and that there is no "essential nexus." Mr. Radley also provided a written document.

    A. *Dolan v. City of Tigard* applies only to cases in which the City exacts property from a property owner at the time of a land use approval. *Dolan* does not apply to annexations.

    B. To the extent the Mr. Radley is arguing that the City could not require the property owners to consent to annexation as a condition of land use approval, that challenge is too late. The land use approvals are final and cannot be collaterally challenged. Furthermore, Mr. Radley was not the applicant or a landowner in any of the land use cases and lacks standing to challenge conditions that have been accepted by the applicants.

    C. The "essential nexus" requirement is imposed on exactions by the *Nollan v. California Coastal Commission* case. Like *Dolan*, the case applies only to exactions at the time of land use approvals, not to annexations. To the extent that Mr. Radley is challenging conditions of approval in the previous land use cases, that challenge is too late, and Mr. Radley lacks standing to make the challenge.

    D. The document that Mr. Radley provided is an excerpt discussing the requirement, under Rhode Island law, that a building official must issue a building permit that meets the requirements of the building code. Rhode Island law concerning building officials is not relevant to any issue regarding these annexations. If Mr. Radley is attempting to argue that the City cannot require a consent to annexation, any requirement regarding consents to annexations by the City are imposed in the context of a land use proceeding. The City has more authority and more discretion in land use proceedings than in issuing building permits.

Julie Russell

13. In addition to issues raised by others, Ms. Russell claimed that the map included with the notice of annexation was inaccurate as to which areas are included within the City limits and which areas are outside the City limits. Ms. Russell argued that the City's process violated Comprehensive Plan Policies 2.1.1. and CDC 18.320.020. Ms. Russell stated dissatisfaction with the proposed zoning.

A. The maps provided with the notice were accurate. They showed the location of the properties being annexed and accurately showed areas within the city limits by a shaded yellow area. There is no requirement to provide a map with the notice of the annexation hearing. Even if there was some inaccuracy, the maps provided sufficient information to advise of the location of the properties to be annexed and their relationship to the City. The City provided notice in compliance with all applicable requirements. In the event that some person may have failed to receive notice, failure of a person to receive notice does not invalidate the notice, which was properly provided.

B. Comprehensive Plan Policy 2.1.1 provides: "The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process." This policy is not an approval standard or criterion for an annexation application. The City's land use regulations have been acknowledged, and those regulations provide the process, including citizen involvement, for considering land use applications. That process includes notice and a hearing, and the City provided notice and a hearing, as required by the CDC. Compliance with the acknowledged regulations demonstrates compliance with the Comprehensive Plan policies implemented by the regulations. Citizens, including Ms. Russell, have had the opportunity to be involved in process. The process of necessity works differently in a quasi-judicial land use process than in a legislative process.

C. CDC 18.320.020 provides:

18.320.020 Approval Process and Standards

A. Approval Process. Annexations shall be processed by means of a Type IV procedure, as governed by Chapter 18.390 using standards of approval contained in Subsection B2 below.

B. Approval Criteria. The decision to approve, approve with modification, or deny an application to annex property to the City shall be based on the following criteria:

1. All services and facilities are available to the area and have sufficient capacity to provide service for the proposed

annexation area; and

2. The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.

C. Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.

D. Conversion table. Table 320.1 summarizes the conversion of the County's plan and zoning designations to City designations which are most similar.

The City used a Type IV approval process. The City has capacity to provide all required services to the area to be annexed, and the applicable Comprehensive Plan Policies, including those in Chapter 10, have been satisfied. The properties being annexed already have City comprehensive plan and zoning designations, that have been adopted and imposed by the County. Ms. Russell specifically argued that the City lacks parks capacity in the area. However, the City has sufficient parks capacity throughout the City to provide service to its residents, including residents in the areas being annexed. The services listed in the Comprehensive Plan, water, sewer, storm sewer, streets, police and fire protection, are the essential services that must be available, and those services will be available to the newly annexed areas. Ms. Russell questioned the adequacy of the street system. The City Council finds that the street system is adequate to provide service and will remain adequate. If the properties are not annexed, they could still be developed consistent with the County zoning, which is the same as City zoning, so whether the properties are annexed or not does not affect the impact on the street system.

D. The areas to be annexed all have existing City zones that were established consistent with Table 320.1. The zoning is consistent with the Comprehensive Plan and applicable Community Development Code provisions.

Scott Miller

14. In addition to issues addressed in the "Issues Raised By More Than One Person" section of these findings, Mr. Miller stated a concern with an increase in taxes. Mr. Miller also argued that the consents received by the City are not consents.

    A. Mr. Miller does not own property being annexed. His property is outside the area proposed for annexation. His taxes will not increase as a result of the annexation. The property owners in the area to be annexed have consented to the annexation. Whether taxes may increase is not an applicable standard or criterion in deciding an annexation.

    B. For each of the annexations, the City has either the written consent of the property owners or a petition from the property owners to initiate the annexation. All are valid consents.

Lisa Hamilton Treick

15. In addition to issues address in the "Issues Raised By More Than One Person" section of these findings, Ms. Hamilton Treick argued that Measure 37 gives property owners rights that are violated by these annexations.

    A. Ms. Hamilton Treick does not own property that will be annexed by these annexations. All owners of property being annexed have consented to these annexations. The property owners or their representatives who testified expressly stated that they voluntarily consent to the annexations. One of them, Tom Weber, stated that he actively sought annexation to Tigard because of the value it brings to his property. Measure 37 is not an applicable standard or criterion for annexation.

16. Ms. Hamilton Treick also argued that the City has no authority to condition land use approvals or acceptance of land use applications on a consent to annexation.

    A. This is a challenge to final land use decisions that were not been appealed within the time allowed by statute. Those decisions cannot be collaterally attacked.

    B. The various agreements with the County and other urban service providers, including the Urban Services Intergovernmental Agreement and Tigard Urban Service Agreement, anticipate that the City will provide planning services and will ultimately annex Tigard's urban service area. Requiring annexation is not inconsistent with those agreements. Urban Service Agreement Section I.D provides that the City shall endeavor to annex certain areas, including all areas currently proposed for annexation. Requiring annexation consents effectuates this provision of the Urban Service Agreement. The Urban Services Intergovernmental Agreement gives Tigard all land use decision-making authority

over the area to be annexed. Land use authority includes the authority to impose conditions. The City has the authority to impose a condition of approval requiring consent to annexation when it receives a land use application for a property outside the City.

Individual Comments – Post-Hearing Written Submissions

Julie Russell

17. Ms. Russell again discussed general opposition to annexation in the Bull Mountain area, HB 2484, SB 887, Comprehensive Plan Policies 2.1.1.and 10.1.2, and CDC 18.320.020. The above findings address those arguments.

18. Ms. Russell also argues that the zoning is wrong and inconsistent with the Bull Mountain Community Plan. The areas have all been rezoned by the County and the zoning being applied is the zoning required by CDC 18.320. Furthermore, as demonstrated in the written testimony of John Marquart, there is little or no practical difference between Washington County R-6 and Tigard R-7 zoning, as applied.

19. Ms. Russell argues that not everyone who was entitled to receive notice actually received notice. The City provided notice as required by applicable regulations. While it is possible that some persons did not receive notice, the City complies with the notice requirements.

20. Ms. Russell complains about possible effects on other service providers. The City has not received any negative comments from other service providers. All service providers in the area have agreed that the area being annexed will be annexed to Tigard. Services will be provided as agreed to in the Urban Services Agreements entered into by the City and other service providers.

21. Ms. Russell argues that the annexation will interfere with the orderly and economic provision of public facilities and services. However, her argument appears to be that services can be provided without annexation. That does not mean that annexation will disrupt or interfere with service provision. The agreements between the service providers will ensure orderly and economic provision of services.

22. Ms. Russell argues that the Alberta Rider School property should not be annexed. None of her arguments relate to any applicable standard or criterion.

23. Ms. Russell opposes the Summit Ridge annexation as non-contiguous. The Summit Ridge area being annexed will be contiguous with the City on annexation.

24. Ms. Russell objects to the Annexation of Arlington Heights 3 on the grounds that the annexation will cause annexation to a homeowners association. That argument does not related to any applicable standard or criterion. Participation in a homeowner's association is a matter of contract between the parties and unrelated to a City's authority

to annex. Ms Russell also argues that the City cannot annex only part of a subdivision. No applicable standard or criterion prohibits annexation of part of a subdivision. Furthermore, Arlington Heights 3 is a separate subdivision from Arlington Heights 1 and 2.

LaVelle and Marie Day

25. The Days object to the annexation on the grounds that the annexation may interfere with efforts to annex to King City or to create a new city. This argument does not relate to any applicable criterion or standard. None of the Days' other arguments are based on applicable standards or criteria.

Jackie and Gary Kisling

26. The Kislings raise issues related to HB 2484 and HB 2722. Those bills are addressed in the above findings.

Henry Kane

27. Mr. Kane makes arguments against island annexations. None of the annexations are island annexations.

Lisa Hamilton-Treick and Tom Treick

28. Ms. Hamilton-Treick and Mr. Treick oppose the process in which the hearings on four annexations were combined as causing hardship on those who wish to appeal. Even if the hearings had not been combined, the hearings could have been, and most likely would have been held at the same meeting. Therefore, the appeals would have all been due at the same time. Combining the hearings allowed people to state their objections a single time so as to avoid multiple repeated testimony. All persons were given a full opportunity to address any issues related to any of the four annexations.

29. They also object to the boundaries as being irregular and question the voluntariness of the consents. These issues are addressed above.

30. They also oppose the transfer of Traffic Impact Fees to Tigard's TIF accounts. That is not a relevant issue and does not relate to any applicable standard or criterion.

Philip E. Decker

31. Mr. Decker opposes the annexations as not being contiguous. No property being annexed will be separated from the City by any intervening unincorporated territory. The annexations are of contiguous property.

32. Mr. Decker argues that ORS 222.115 allows annexation contracts only for contiguous parcels. ORS 222.115 does not require that property be contiguous at the time an

annexation contract is signed. One purpose of ORS 222.is to allow properties that are not contiguous to consent to annexation so that they can receive urban services immediately and be annexed later when intervening properties annex. The contiguity requirement applies only when the annexation becomes effective.

33. Mr. Decker argues that the areas being annexed are irregularly shaped. The shape of the area being annexed is not an issue.

34. Mr. Decker argues that previous annexations were improper. The previous annexations are final and have not been challenged. They cannot be collaterally attacked at this time.

Comments In Support

35. After the hearing, the City received several written comments in support of the proposed annexations, including statements from Sean Foushee, on behalf of the applicants for the Mountain View Estates, from John Marquart on behalf of the applicant for the Wilson Ridge annexation, and from Tom Weber, on behalf of the owners of the Arlington Heights 3 property, all of whom stated that the annexation applications were voluntary. Mr. Marquart and Mr. Weber addressed other issues, strongly supporting the annexations of their respective areas.

G:\muni\Tigard\revisedannexationfindings090105.doc

CITY OF TIGARD, OREGON

ORDINANCE NO. 2005-_____

AN ORDINANCE ANNEXING 2.68 ACRES, APPROVING WILSON RIDGE ANNEXATION (ZCA2005-00002), AND WITHDRAWING PROPERTY FROM THE TIGARD WATER DISTRICT, WASHINGTON COUNTY ENHANCED SHERIFF'S PATROL DISTRICT, WASHINGTON COUNTY URBAN ROADS MAINTENANCE DISTRICT, WASHINGTON COUNTY STREET LIGHTING DISTRICT #1, AND THE WASHINGTON COUNTY VECTOR CONTROL DISTRICT.

WHEREAS, the City of Tigard is authorized by ORS 222.120(4)(B) and 222.170 to initiate an annexation upon receiving consent in writing from a majority of the electors registered in the territory proposed to be annexed and written consent from owners of more than half the land in the territory proposed to be annexed; and

WHEREAS, the City of Tigard is authorized by ORS 222.120(5) and 222.520 to withdraw properties which currently lie within the boundary of the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District upon completion of the annexation; and

WHEREAS, the Tigard City Council held a public hearing on August 9, 2005 to consider the annexation of two (2) parcels of land consisting of 2.68 acres and withdrawal of said property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, the City Council left the record open for written submissions for an additional seven days after the hearing on August 9, 2005 and allowed a further seven days on August 23, 2005 for submission of responses to new evidence submitted during that time, as provided by ORS 197.763(6)(c); and

WHEREAS, pursuant to ORS 222.520(2) the City is liable to the Water District for certain debt obligations, however, in this instance the Water District has no debt for the City to assume, therefore, no option regarding the assumption of debt needs to be made; and

WHEREAS, pursuant to Metro 3.09, ORS 222.120 and 222.524, notice was given and the City held a public hearing on the issue of the annexation into the City and withdrawal of the annexed property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, pursuant to ORS 222.524, the City must declare the withdrawal of annexed properties from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District by Ordinance; and

WHEREAS, the Tigard Development Code states that upon annexation, the zone is automatically changed to the City zoning most closely conforming to the County zoning; and

WHEREAS, the current zoning district is R-7, an existing City zone that has been adopted by the County and the zoning after annexation would remain R-7 so that no zone change is necessary, and by annexation the Comprehensive Plan of the City of Tigard goes into effect; and

WHEREAS, the annexation has been processed in accordance with the requirements of Metro 3.09 and has been reviewed for compliance with the Tigard Community Development Code and the Comprehensive Plan and the annexation substantially addresses the standards in Metro 3.09 regulating annexations; and

WHEREAS, the City Council has carefully considered the testimony at the public hearing and the written materials submitted after the hearing and determined that withdrawal of the annexed properties from the applicable service districts is in the best interest of the City of Tigard.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The Council adopts the staff report and the document entitled "Supplemental Finding Concerning Compliance with ORS Chapter 222" as findings. In addition, Council adopts the document entitled "Findings in Response to Comments" as additional findings of fact.

SECTION 2: The Tigard City Council hereby annexes the parcels described in the attached **Exhibit "A"** and shown in **Exhibit "B"** and withdraws said parcels from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District.

SECTION 3: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor and posting by the City Recorder.

SECTION 4: City staff is directed to take all necessary measures to implement the annexation, includingfiling certified copies of the Ordinance with Metro for administrative processing, filing with state and county agencies as required by law, and providing notice to utilities.

SECTION 5: Pursuant to ORS 222.120(5), the effective date of the withdrawal of the property from the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District shall be the effective date of this annexation.

SECTION 6: Pursuant to ORS 222.465, the effective date of the withdrawal of this property from the Tigard Water District shall be July 1, 2006.

SECTION 7: In accordance with ORS 222.180, the annexation shall be effective upon filing with the Secretary of State.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2005.

_____
Cathy Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2005.

_____
Craig Dirksen, Mayor

Approved as to form:

_____
City Attorney

_____
Date

Wilson Ridge
ZCA2005-00002

EXHIBIT A

alpha
COMMUNITY DEVELOPMENT

LEGAL DESCRIPTION
GRAHAM ANNEXATION

JOB NO. 328-027

A PARCEL OF LAND LOCATED IN THE NORTHEAST ONE-QUARTER OF SECTION 9, TOWNSHIP 2 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN, WASHINGTON COUNTY, OREGON, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF LOT 13 OF THE PLAT OF "MOUNTAIN GATE". BEING THE SOUTHEAST CORNER OF THE PROPERTY DESCRIBED IN DEED DOCUMENT NO. 2004-06529; THENCE ALONG THE EAST LINE OF SAID PROPERTY AND SAID LINE EXTENDED, NORTH 01°31'37" EAST 132.47 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF S.W. BULL MOUNTAIN ROAD (COUNTY ROAD NO. 2515) LYING 20.00 FEET, RIGHT-ANGLE MEASURE, NORTHEASTERLY OF THE CENTERLINE; THENCE ALONG SAID RIGHT-OF-WAY LINE SOUTH 59°20'07" EAST 472.32 FEET TO THE INTERSECTION WITH THE NORTHERLY EXTENSION OF WESTERLY RIGHT-OF-WAY LINE OF SW 133RD AVENUE LYING 25.00 FEET, RIGHT-ANGLE MEASURE WEST OF THE CENTERLINE OF SW 133RD AVENUE; THENCE ALONG SAID EXTENSION AND WESTERLY RIGHT-OF-WAY LINE SOUTH 00°31'25" EAST 192.98 FEET TO THE SOUTHEAST CORNER OF THE PROPERTY DESCRIBED IN DEED DOCUMENT NO. 2000-04259; THENCE LEAVING SAID RIGHT-OF-WAY LINE ALONG THE SOUTH LINE OF SAID PROPERTY AND THE PROPERTY DESCRIBED IN DEED DOCUMENT NO. 2000-14685 NORTH 89° 43'44" WEST 402.59 FEET TO A POINT LYING 10.00 FEET RIGHT ANGLE MEASURE EAST OF THE EAST LINE OF THE PLAT OF "MOUNTAIN GATE" ; THENCE SOUTH 01° 31' 37" WEST 928.57 FEET PARALLEL TO THE EAST LINE OF "MOUNTAIN GATE" AND "MOUNTAIN GATE NO.2" ; THENCE LEAVING SAID LINE NORTH 88° 22' 19" WEST 10.00 FEET TO A THE SOUTHEAST CORNER LOT 64 "MOUNTAINGATE NO.2"; THENCE ALONG THE AFOREMENTIONED PLAT LINES NORTH 01° 31' 37" EAST 1213.81 FEET TO POINT OF BEGINNING.

CONTAINING APPROXIMATELY 3.104 ACRES.

THE BASIS OF BEARING FOR THIS DESCRIPTION IS WASHINGTON COUNTY SURVEY NO. 22,110

N:\proj\328-027\Word\LEGAL DESCRIPTION_GRAHAM.doc

Plaza West – Suite 230 – 9600 SW Oak – Portland – Oregon 97223
Office 503 452-8003 – Fax 503 452-8043
www.alphacommunity.com

EXHIBIT B

Tilson Ridge
ZCA2005-00002

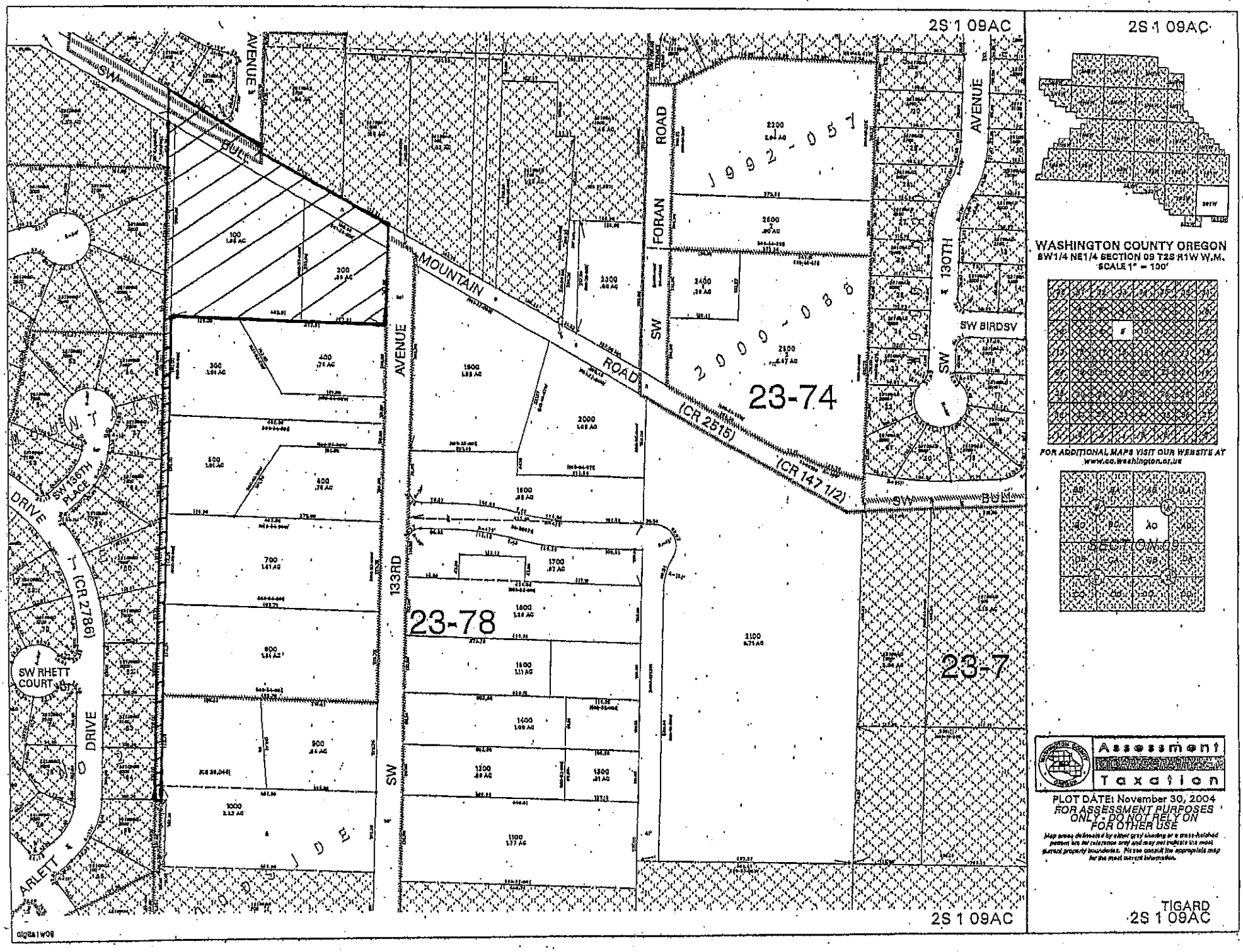
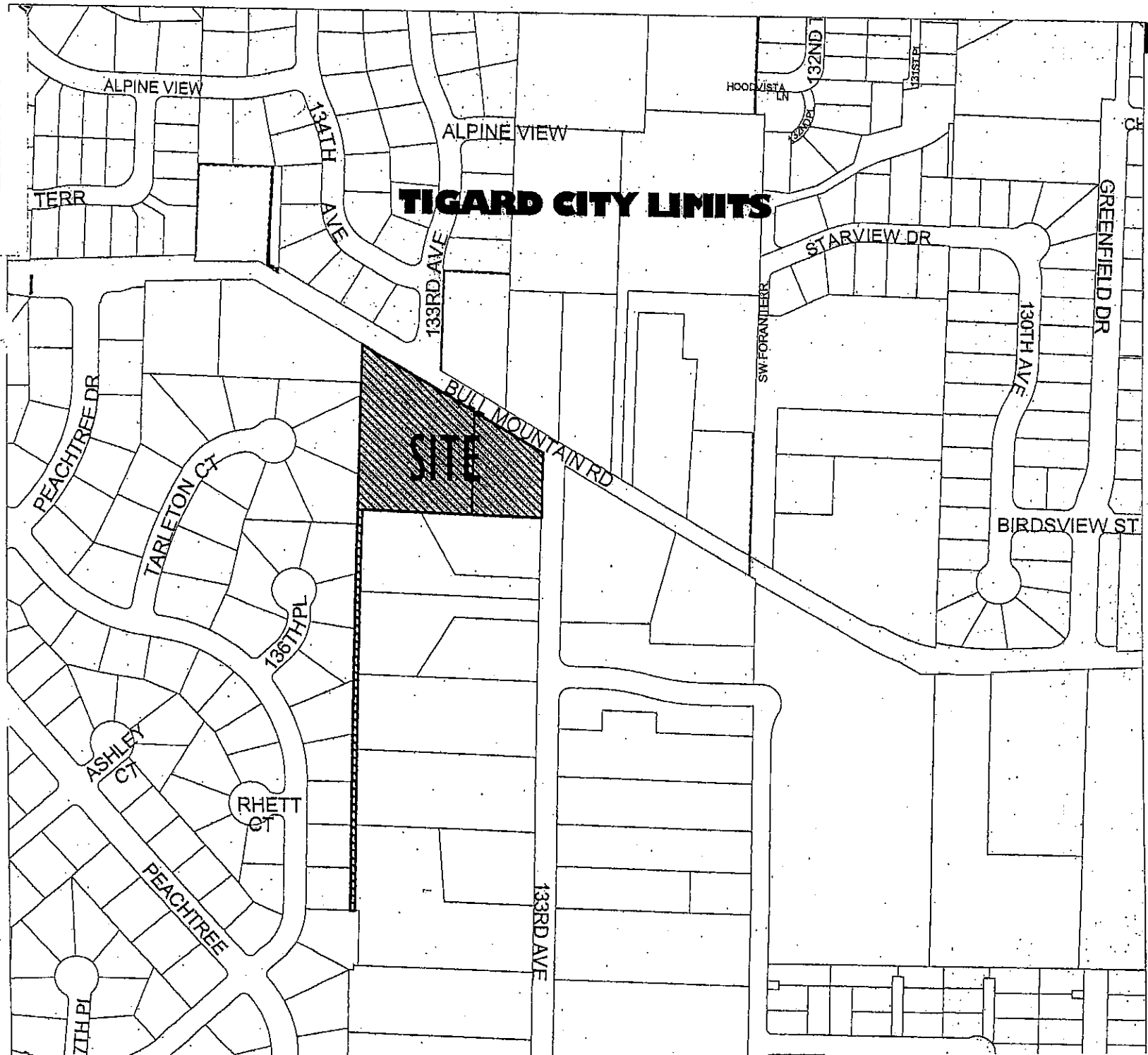


EXHIBIT C



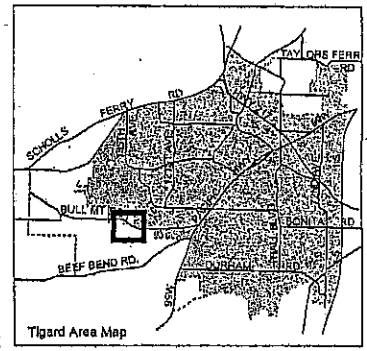
CITY of TIGARD

GEOGRAPHIC INFORMATION SYSTEM

VICINITY MAP

ZCA2005-00002

WILSON RIDGE ANNEXATION



N

0 100 200 300 400 Feet

1"= 311 feet

City of Tigard

Information on this map is for general location only and should be verified with the Development Services Division
13125 SW Hall Blvd
Tigard, OR 97223
(503) 639-4171
http://www.ci.tigard.or.us

Agenda Item: 7
Hearing Date: August 9, 2005 7:30 PM

STAFF REPORT TO THE CITY COUNCIL FOR THE CITY OF TIGARD, OREGON

CITY OF TIGARD
Community Development
Shaping A Better Community

SECTION I. APPLICATION SUMMARY

FILE NAME: ALBERTA RIDER/SUMMIT RIDGE ANNEXATION

CASE NO.: Zone Change Annexation (ZCA) ZCA2005-00003

OWNER(S): Various Owners

PROPOSAL: Annexation of 56 parcels containing approximately ~~20.75~~ now 19.56 acres into the City of Tigard.

CURRENT ZONING DESIGNATION: R-7, Medium Density Residential.

EQUIVALENT CITY ZONING DESIGNATION: R-7, Medium Density Residential. The R-7 zoning district is designed to accommodate attached single-family homes, detached single-family homes with or without accessory residential units, at a minimum lot size of 5,000 square feet, and duplexes, at a minimum lot size of 10,000 square feet. Mobile home parks and subdivisions are also permitted outright. Some civic and institutional uses are also permitted conditionally.

LOCATION: Alberta Rider School: WCTM 2S109AC, Tax Lot 2100 and 2S109AD, Tax Lot 1300; and Remaining Portions of Summit Ridge Subdivision: WCTM 2S109DA, Tax Lots 8500, 8600, 8700, 8800, 9400, 9500, 9600, 9700, 9800, 9900, 10000, 10100, 10200, 10300, 11500, 11600, 11700, 11800, 11900, 12000, 12100, 12200, 12300, 12400, 12500, 12600, 12700, 12800, 12900, 13000, 13400 and 13500, and WCTM 2S109DB, Tax Lots 1000, 1900, 2100, 2200, 2300, 2400, 2500, 2600, 2700, 2800, 2900, 3000, 3100, 3200, 3300, 3400, 3500, 3600, 3700, 3800, 3900 and 4000.

APPLICABLE REVIEW CRITERIA: Community Development Code Chapters 18.320 and 18.390; Comprehensive Plan Policies 2 and 10; Metro Code Chapter 3.09; and ORS Chapter 222.

SECTION II. STAFF RECOMMENDATION

Staff recommends that the Council find that the proposed annexation will not adversely affect the health, safety and welfare of the City. Therefore, staff recommends **APPROVAL** of the annexation by adoption of the attached ordinance.

SECTION III. BACKGROUND INFORMATION

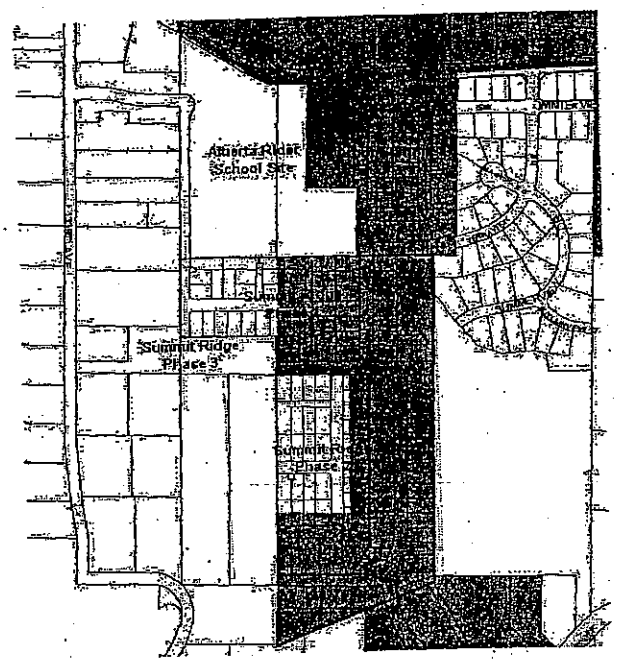
Vicinity Information:
The subject parcels are located at the southeast corner of SW 133rd and Bull Mountain Road, and to the south in the Summit Ridge Subdivision, west of SW Greenfield, north of SW Beef Bend Road.

Site Information and Proposal Description:
There are essentially three areas involved in this particular annexation request: the Alberta Rider School site; the undeveloped portion (Phase 3) of Summit Ridge; and the remaining portions of Summit Ridge (Phase 1 and 2) that were not previously annexed last year. There are a total of 56 properties involved in this request totaling approximately ~~20.75~~ 19.56 acres.

For the first area, the school site, as a condition of the Conditional Use approval, the applicant was required to annex the property prior to final building permit inspection. This was done to allow the school to proceed in a timely fashion on their construction schedule while going through the process to annex. The intention is that the annexation will be complete before the school needs to open, for if the annexation is not approved in time, final inspections can't be conducted and the school cannot be occupied.

The second area, Phase 3 of Summit Ridge, the subdivision was required to annex prior to recording the final plat for the lots. This is a standard condition that is applied to properties requesting development approval when bordering the city limits.

For the third area, Phases 1 and 2 of Summit Ridge, portions of this subdivision are inside and some are outside the city limits. During the review of Summit Ridge Phase 1 and 2, the property did not abut the city limits. The City required that the applicant sign a consent form for future annexation when the city limits did abut the site. During an annexation hearing to annex the Arbor Summit subdivision immediately north of Summit Ridge, the City included one of the parcels of Summit Ridge through a double majority method. The annexation occurred and was finalized before the plats for those phases were recorded. The result was that some of the lots that were created through those plats ended up straddling the city limit boundaries. See the following map.



SECTION IV. APPLICABLE REVIEW CRITERIA AND FINDINGS

The relevant criteria in this case are Tigard Comprehensive Plan Policies 2.1.1, 10.1.1, 10.1.2, and; Tigard Community Development Code Chapter 18.320.

Staff has determined that the proposal is consistent with the relevant policies of the Comprehensive Plan based on the following findings:

Comprehensive Plan

Policy 2.1.1: The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process.

This Policy requires an ongoing citizen involvement program. Interested parties and surrounding property owners within 500 feet have been notified of the public hearing and notice of the hearing has been published in a newspaper of general circulation. The site has been posted since June 23, 2005. There have been a number of opportunities for citizens to be involved in the decision making process, including the review of the subdivision and conditional use request.

Policy 10.1.1: The City shall review each of the following services as to adequate capacity, or such services to be made available, to serve the parcel if developed to the most intense use allowed, and will not significantly reduce the level of services available to developed and undeveloped land within the City of Tigard. The services are: water, sewer, drainage, streets, police, and fire protection.

This policy requires adequate service capacity delivery to annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. In the review of the Alberta Rider School and Summit Ridge subdivision, staff found that the adjacent streets had adequate capacity with completion of required improvements, sewers will be extended up from Bella Vista subdivision on the south, through Summit Ridge and up through the Alberta Rider School site, storm drainage is conveyed through a new pipe from Bella Vista to the Alberta Rider project, and water is provided by an existing 12" water line in Bull Mountain Road. The subdivision approval is contingent on the applicant providing these services prior to recording the final plat. The conditional use approval also required completion of these utilities and facilities. This policy is satisfied.

If required by an adopted capital improvements program ordinance, the applicant shall sign and record with Washington County a nonremonstrance agreement regarding the following: The formation of a local improvement district (L.I.D.) for any of the following services that could be provided through such a district. The extension or improvement of the following: water, sewer, drainage and streets. The formation of a special district for any of the above services or the inclusion of the property into a special service district for any of the above services.

No L.I.D's have been required with the subject parcels or land use approvals. All public infrastructure listed above will have to be completed before the land is subdivided by a final subdivision plat or final inspection occurs on the school building. The costs of providing such services will be borne by the applicant. Since there are no capital improvements identified for this site, no nonremonstrance agreement is necessary.

The City shall provide urban services to areas within the Tigard urban planning area or with the urban growth boundary upon annexation.

The City of Tigard has an urban services agreement with Washington County for those areas within the City's urban growth boundary in the Bull Mountain area. This policy has been complied with.

Policy 10.1.2: approval of proposed annexations of land by the city shall be based on findings with respect to the following: the annexation eliminates an existing "pocket" or "island" of unincorporated territory; or the annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the city; the police department has commented upon the annexation; the land is located within the Tigard urban planning area and is contiguous to the city boundary; the annexation can be accommodated by the services listed in 10.1.1(a).

This Policy pertains to boundary criteria for annexations. The proposed annexation will not eliminate an existing "pocket" or "island" of unincorporated territory; however the annexation will also not create an irregular boundary making it difficult for police to determine whether a particular parcel is in or outside the city. In fact, this annexation is in part to address a situation where parcels fall both inside and outside the city limits. Specific jurisdiction for a number of services is clouded by the partial inclusion of these properties. Their formation is the result of disjointed annexation and plat approval timing. The subject annexation will eliminate this confusion and implement the original requirements placed on the subdivision regarding annexation of the property. The proposed annexation will incorporate the entire subdivision boundary for Phase 3 of Summit Ridge. In addition, the entire property where the Alberta Rider school site sits is also included in this request. Boundaries of this request follow logical extensions to the edge of the properties, except where the school abuts Bull Mountain Road. In that location the annexation will include the remaining portion of that road that is not presently in the city limits. The land is within the Urban Services Area inside the Urban Growth Boundary and is bordered by the city limits on the northern side. Services to the subject property are addressed above. This policy is met.

Community Development Code
Section 18.320.020: This Section addresses approval standards for annexation proposals:

All services and facilities are available to the area and have sufficient capacity to provide service for the proposed annexation area;

Adequate service (water, sewer, drainage, streets, police, and fire protection) capacity is available to serve the annexed parcels. The City of Tigard Police, Engineering and Water Departments, NW Natural Gas, Tualatin Valley Fire and Rescue, have all reviewed the annexation request and have offered no objections. Additionally, the adequacy and availability of services to serve the intended R-7 Medium Density residential and institutional development has been reviewed and conditioned as necessary as part of the Summit Ridge subdivision and Alberta Rider reviews. Therefore, this policy is satisfied.

The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.

Applicable Comprehensive Plan policies have been addressed above. The implementing ordinance provisions of ORS 222, TCDC 18.390, and Metro Code 3.09 were followed in processing this annexation request. Conformance with other development code provisions have been addressed in the previous land use reviews. This standard has been met.

Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or/zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.

The subject properties are in the Urban Service Area and are zoned R-7 medium density residential, pursuant to the City of Tigard's Urban Services Intergovernmental Agreement. The R-7 zoning designation is consistent with the original Washington County's R-6 zoning designation as shown in the table below. The City's zoning was adopted by the County with the City's R-7 zoning district when the Intergovernmental Agreement was signed between the county and the city to provide city planning services to this area. Therefore, the property does not need to be rezoned upon annexation. According to Section 18.320.020.C, the City's Comprehensive plan and zoning designations occur automatically and concurrently with the annexation.

Conversion table. Table 320.1 summarizes the conversion of the County's plan and zoning designations to City designations which are most similar.

TABLE 320.1
CONVERSION TABLE FOR COUNTY AND CITY PLAN AND ZONING DESIGNATIONS

Washington County Land Use Districts/Plan Designation	City of Tigard Zoning	City of Tigard Plan Designation
R-5 Res. 5 units/acre	R-4.5 SFR 7,500 sq. ft.	Low density 1-5 units/acre
R-6 Res. 6 units/acre	R-7 SFR 5,000 sq. ft.	Med. density 6-12 units/acre
R-9 Res. 9 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-12 Res. 12 units/acre	R-12 Multi-family 12 units/acre	Med. density 6-12 units/acre
R-15 Res. 15 units/acre	R-25 Multi-family 25 units/acre	Medium High density 13-25 units/acre
R-24 Res. 24 units/acres	R-25 Multi-family 25 units/acre	Medium High density 13-25 units/acre
Office Commercial	C-P Commercial Professional	CP Commercial Professional
NC Neighborhood Commercial	CN Neighborhood Commercial	CN Neighborhood Commercial
CBD Commercial Business District	CBD Commercial Business District	CBD Commercial Business District
GC General Commercial	CG General Commercial	CG General Commercial
IND Industrial	I-L Light Industrial	Light Industrial

Metro
Metro 3.09 requires the additional standards to be addressed in annexation decisions, in addition to the local and state review standards. These are addressed and satisfied as discussed below:

Consistency with the directly applicable provisions in an urban service provider agreement or annexation plan adopted pursuant to ORS 195.065;

The processing has been done consistent with applicable Urban Service Provider agreements.

Consistency with directly applicable provisions of urban planning or other agreement, other than agreements adopted pursuant to ORS 195.065, between the affected entity and a necessary party;

The process required by the Development Code and Comprehensive Plan is consistent with the Urban Planning Agreement for annexations.

Consistency with specific directly applicable standards or criteria for boundary changes contained in comprehensive land use plans and public facility plans;

This has been discussed previously in this report and, as discussed, this criterion is satisfied.

Consistency with specific directly applicable standards or criteria for boundary changes contained in the Regional Framework Plan or any functional plans;

Because the Development Code has been amended to comply with applicable Metro functional plan requirements, by complying with the Development Code and Comprehensive Plan, the annexation is consistent with the applicable Functional Plan and the Regional Framework plan.

Whether the proposed changes will promote or not interfere with the timely, orderly and economic provisions of public facilities and services;

The proposed annexation will not interfere with the provision of public facilities or services because it is adjacent to existing city limits and services, and the delivery of those services was anticipated as part of the urban services agreement which is intended to promote the timely, orderly, and economic delivery of those public facilities and services.

If the proposed boundary change is for annexation of territory to Metro, a determination by Metro Council that the territory should be included in the Urban Growth Boundary shall be the primary criterion for approval;

The subject property is already within the Metro boundaries.

Consistency with other applicable criteria for the boundary change in question under state and local law.

Consistency with other applicable criteria has been discussed previously in this report.

SECTION V. AGENCY COMMENTS

Washington County Department Of Land Use & Transportation, Verizon, Qwest Communications, Northwest Natural Gas, Beaverton School District #48, Comcast Cable Corporation, Portland General Electric, Metro Area Communications, Cleanwater Services, Metro Land Use & Planning, Tualatin Hills Park & Rec. District, Tualatin Valley Water District, Tualatin Valley Fire & Rescue, and Tigard/Tualatin School District 23J have had the opportunity to review the proposal and have offered no objections.

BASED ON THE FINDINGS INDICATED ABOVE, PLANNING STAFF RECOMMENDS APPROVAL OF ZONE CHANGE ANNEXATION (ZCA) 2005-00003 – ALBERTA RIDER/SUMMIT RIDGE ANNEXATION.

PREPARED BY: Morgan Tracy
Associate Planner

July 28, 2005
DATE

07/28/05

SUPPLEMENTAL FINDINGS
CONCERNING COMPLIANCE WITH ORS CHAPTER 222
ZCA2005-00003 – Alberta Rider / Summit Ridge

The City is proceeding with this annexation without an election in the territory to be annexed under ORS 222.125. That statute provides:

> The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation.

The Council finds:

1. With the exception of one person who has a life estate in one portion of the area originally proposed for annexation, all of the owners of land in the territory proposed for annexation under ZCA2005-00003 have consented in writing to annexation to the City of Tigard and those consents have been duly filed with the City.

2. According to County voter registration information, there is one registered voter residing in the territory originally proposed to be annexed under ZCA2005-00003. That elector is the same person who has a life estate in a property within the area originally proposed for annexation. This elector has not signed a petition or consent to annex. Therefore, the portion of the proposed annexation territory where the elector resides and has a life estate cannot be included in the proposed annexation without an election.

3. The City Council determined to exclude the area where the elector/life estate holder resides. The annexation of the remaining area may proceed without a vote in the territory to be annexed pursuant to ORS 222.125 because the City has the consent of all owners and there are no electors in the area now proposed for annexation.

FINDINGS IN RESPONSE TO COMMENTS

At the August 9, 2005, the City Council received testimony from various persons regarding four proposed annexations. The Council allowed all parties until August 16 to submit additional written information. This document sets out the City's findings on the legal and factual issues raised by the testimony and written submissions. The Council received a request to reopen the record to allow a response to the post-hearing written submissions and allowed until August 30 for persons to raise new issues relating to the new testimony, as provided by ORS 197.763(6)(c) and 197.763(7). This document sets out the City's findings on the legal and factual issues raised by the testimony and written submissions.

1. After the Council allowed additional time to raise new issues in response to new evidence submitted in the post-hearing written submissions, the City received two submissions, both e-mails sent by Julie Russell. Neither of those submissions raises new issues because all issues presented in her e-mails had been raised previously. Furthermore, neither of the submissions addresses new evidence submitted after the close of the oral hearing, but simply contain further argument on the same factual and legal issues she and other opponents had raised in her earlier submissions. Therefore, neither are proper submissions under ORS 197.763(6)(c) and 197.763(7).

Issues Raised By More Than One Person

HB 2484

2. Some people testified that House Bill 2484 (which has been enacted into law) either prevents the City from approving these annexations or demonstrates a legislative intent that a vote is required in any area to be annexed. House Bill 2484 is straightforward. It amends ORS195.215, to make it clear that "annexation plans" under ORS Chapter 195 must be approved both by a majority of voters in the territory to be annexed and by a majority within the City.

   A. HB 2484 does not apply to the annexations being considered by the City because HB 2484 applies only to annexation plans under ORS Chapter 195, and the annexations before the City do not involve annexation plans or ORS Chapter 195. They are annexations under ORS Chapter 222, in particular ORS 222.125. HB 2484, even if it were effective, would not apply to or affect these annexations.

   B. HB 2484 requires a separate vote in the area to be annexed for annexation plan annexations. However, requiring a vote in the area to be annexed would be a meaningless and futile act for areas in which there are no registered voters. There are no registered voters in the area to be annexed in Mountain View Estates annexation (ZCA2004-00003) or in the Alberta Rider/Summit Ridge annexation area (ZCA2005-00003). All of the registered voters in the Arlington Heights 3 (ZCA20005-00001) and Wilson Ridge (ZCA 2005-00002) annexation have consented to annexation.

HB 2722

3. HB 2722 (which has been enacted into law) withdraws the right of cities to veto formation of new cities within three miles of their borders. Some opponents of annexation have argued that the intent of this bill is that the wishes of citizens in the affected areas are respected.

   A. HB 2722 does not apply to annexations.

   B. The affected areas are the areas to be annexed. Two types of persons have interests in the affected areas – those who own property and those who reside there. All owners of all properties to be annexed, and all voters in areas to be annexed have consented to the annexation. No owner or resident in the areas to be annexed has indicated that they do not wish annexation.

SB 877

4. SB 877 (which has been enacted into law) has three major effects. One is that it limits the ability of the City of Beaverton to annex "islands" of territory surrounded by that City. The second effect is that it requires a majority vote in the territory to be annexed by means of an annexation plan under ORS Chapter 195. The third effect is to prohibit the annexation of certain types of industrial property without the consent of the owner.

   A. The provisions affecting only the City of Beaverton do not apply to the City of Tigard.

   B. None of the proposed annexations are "island" annexations, although an "island" is created by the Alberta Rider School/Summit Ridge annexation.

   C. The annexations are not annexation plan annexations and are not subject to ORS Chapter 195.

   D. The annexations are not of industrial land and are not the type of land that cannot be annexed without the consent of the owner. The City has the consent of all owners of all land being annexed.

Voluntary or Coerced Consents

5. Some persons argued that the consents are not valid because they were coerced.

   A. None of the people who provided consents stated they were coerced. Those who testified that the consents were coerced did not specify which persons were coerced. Several persons representing property owners (Tom Weber, John Marquart, Sean Foushee, and Al Jeck) testified orally and/or in writing that consents were voluntary and not coerced. The City Council finds that there is no evidence that any specific individual was coerced into consenting to annexation.

If any person who provided consents believed that the consents were coerced, it is likely that the person would have appeared at the hearing. The Council finds the testimony of Tom Weber, John Marquart, Sean Foushee and Al Jeck to be more persuasive than the evidence of those claiming coercion because the named individuals were in a position to know whether the consents were voluntary or coerced and those who claimed that the consents were coerced did not have personal knowledge regarding the consents. The Council concludes that none of the consents were coerced.

B. ORS 222.115 specifically authorizes contracts between a city and a landowner relating to the extraterritorial provision of service in which the landowner consents to annexation. The fact that the City requires a consent to annexation in return for a contract for the extraterritorial provision of service is explicitly authorized by statute and does not constitute coercion. The City provides planning and building inspection services extraterritorially and may require consents to annexation in order to provide those services.

C. ORS 222.175 recognizes that cities may solicit consents to annexation. The fact that a City seeks consents does not mean that they were coerced and does not invalidate the consents.

Consents To Annexation In Connection With A Land Use Proceeding

6. Some opponents argued that some of the consents were required in connection with land use proceedings, and the City cannot require consents to annexation in order to process a land use application or as a condition of a land use approval.

A. For consents that were provided in connection with a land use approval, the time to challenge the City's authority to impose the consents was during the land use process. In each case, the land use process has been completed and the appeal period has passed. The requirement to provide a consent to annexation can no longer be challenged.

B. None of the persons who provided consents in connection with land use proceedings have in any way challenged the consents or the requirement to provide the consents. To the contrary, some of them have expressly testified that they affirmatively desire that their properties be annexed to the City of Tigard.

General Concern For The Bull Mountain Area

7. Some opponents stated concerns related to the Bull Mountain area in general and to their property in unincorporated areas of Bull Mountain. Some of them argue that the proposed annexations should not proceed because of the negative vote when the Bull Mountain Annexation Plan was presented to the voters in the area to be annexed.

A. The rights and interests of the owners and registered voters in the areas proposed for annexation are recognized by statute. The statutes do not create a legally protected interest for other persons.

B. These annexations are different from the annexation plan presented to the voters. These annexations are property-specific annexations under ORS Chapter 222. The City and the annexation applicants are not requesting approval of an annexation plan. The rejection of an annexation plan under ORS Chapter 195 does not prevent later annexation of specific territory under a different annexation statute.

"Double Majority" Vote

8. Some opponents of the annexation argued that a "double majority" vote (a separately tabulated vote in the City and in the area to be annexed) is required.

A. A "double majority" vote is or will be required for annexation plans under ORS Chapter 195. However, for annexations under ORS Chapter 222, votes in the City are not required unless required by City charter or ordinance, and votes in the area to be annexed are not required if certain criteria are met. A vote in the area to be annexed is not required if all of the owners of all of the land and a majority of the electors in the area to be annexed, if any, consent to the annexation. ORS 222.125. The City Charter and Code do not require a vote within the City.

B. As to each of the annexations, the City has received the consents of all of the owners of all of the land. The City has also received the consents of all of the registered voters in each area that has registered voters. These annexations are not annexation plan annexations under ORS 195, so the double majority requirement does not apply. The City is not required to hold a vote in any of the territories to be annexed, either because there are no electors in the areas to be annexed or because the City has the consent of a majority of the electors in those areas.

"Islands" Of Unincorporated Areas Surrounded By The City

9. Some opponents argued that these annexations create islands of unincorporated areas surrounded by the City. They also note that the City may later annex those islands without consent of owners or electors.

A. There is no legal prohibition on the creation of islands. The City must consider annexation applications that create islands under applicable standards. While the Council must consider whether the borders created by an annexation are so irregular as to potentially cause problems with the provision of police services, the police department accepts these boundaries as being acceptable and not causing confusion for the provision of police services. The police department has provided written statements that they can provide services. The Council finds that

the boundaries are not irregular to the extent they create confusion in the provision of police services.

B. The City does have the authority to annex islands, but is aware that the statutory authority to annex islands may be withdrawn, as it has been withdrawn from one other city and from certain types of land. The possibility of a future annexation proceeding is not an applicable standard or criterion in deciding whether to approve these annexations.

Regular Boundaries

10. Several persons commented that the annexations will not result in a regular boundary.

A. The applicable standard is Comprehensive Plan Policy 10.1.2, which provides:

Approval of proposed annexations of land by the City shall be based on findings with respect to the following:

a. The annexation eliminate an existing "pocket" or "island of unincorporated territory; or

b. The annexation will not create an irregular boundary that makes it difficult for the police in an emergency situation to determine whether the parcel is within or outside the City;

c. The police department has commented on the annexation;

d. The land is located within the Tigard Urban Planning Area and is contiguous to the City boundary;

e. The annexation can be accommodated by the services listed in 10.1.1(a).

B. Policy 10.1.2 is complied with if either (1) subsection a or (2) subsections b through e are met. These annexations comply with subsections b through e. The annexation boundary will not make it difficult for the police in emergency situations to determine whether the parcel is within or without the City. The police department has commented on the annexation and stated that it is capable of providing service. All areas proposed for annexation are within the Tigard Urban Planning Area and are contiguous to the City. The services listed in 10.1.1(a) (water, sewer, drainage, streets, police and fire protection) can be provided to the areas to be annexed – the City and other responsible service providers have capacity to provide service to the areas to be annexed.

Individual Comments -- Testimony at Hearing

Les and Ellen Godowski

11. The Godowskis argued that the annexations will also prevent certain areas from creating their own cities or annexing to King City.

    A. The City has no obligation to refrain from annexing territory based on the possibility that some other city may be incorporated in the area at some point in the future.

    B. All applicable plans and intergovernmental agreements that address urbanization or the provision of urban services designate Tigard as the City that will annex and/or provide urban services to the areas being annexed.

Charles Radley

12. Charles Radley argued that the annexations would violate *Dolan v. City of Tigard* and that there is no "essential nexus." Mr. Radley also provided a written document.

    A. *Dolan v. City of Tigard* applies only to cases in which the City exacts property from a property owner at the time of a land use approval. *Dolan* does not apply to annexations.

    B. To the extent the Mr. Radley is arguing that the City could not require the property owners to consent to annexation as a condition of land use approval, that challenge is too late. The land use approvals are final and cannot be collaterally challenged. Furthermore, Mr. Radley was not the applicant or a landowner in any of the land use cases and lacks standing to challenge conditions that have been accepted by the applicants.

    C. The "essential nexus" requirement is imposed on exactions by the *Nollan v. California Coastal Commission* case. Like *Dolan*, the case applies only to exactions at the time of land use approvals, not to annexations. To the extent that Mr. Radley is challenging conditions of approval in the previous land use cases, that challenge is too late, and Mr. Radley lacks standing to make the challenge.

    D. The document that Mr. Radley provided is an excerpt discussing the requirement, under Rhode Island law, that a building official must issue a building permit that meets the requirements of the building code. Rhode Island law concerning building officials is not relevant to any issue regarding these annexations. If Mr. Radley is attempting to argue that the City cannot require a consent to annexation, any requirement regarding consents to annexations by the City are imposed in the context of a land use proceeding. The City has more authority and more discretion in land use proceedings than in issuing building permits.

Julie Russell

13. In addition to issues raised by others, Ms. Russell claimed that the map included with the notice of annexation was inaccurate as to which areas are included within the City limits and which areas are outside the City limits. Ms. Russell argued that the City's process violated Comprehensive Plan Policies 2.1.1. and CDC 18.320.020. Ms. Russell stated dissatisfaction with the proposed zoning.

A. The maps provided with the notice were accurate. They showed the location of the properties being annexed and accurately showed areas within the city limits by a shaded yellow area. There is no requirement to provide a map with the notice of the annexation hearing. Even if there was some inaccuracy, the maps provided sufficient information to advise of the location of the properties to be annexed and their relationship to the City. The City provided notice in compliance with all applicable requirements. In the event that some person may have failed to receive notice, failure of a person to receive notice does not invalidate the notice, which was properly provided.

B. Comprehensive Plan Policy 2.1.1 provides: "The City shall maintain an ongoing citizen involvement program and shall assure that citizens will be provided an opportunity to be involved in all phases of the planning process." This policy is not an approval standard or criterion for an annexation application. The City's land use regulations have been acknowledged, and those regulations provide the process, including citizen involvement, for considering land use applications. That process includes notice and a hearing, and the City provided notice and a hearing, as required by the CDC. Compliance with the acknowledged regulations demonstrates compliance with the Comprehensive Plan policies implemented by the regulations. Citizens, including Ms. Russell, have had the opportunity to be involved in process. The process of necessity works differently in a quasi-judicial land use process than in a legislative process.

C. CDC 18.320.020 provides:

18.320.020 Approval Process and Standards

A. Approval Process. Annexations shall be processed by means of a Type IV procedure, as governed by Chapter 18.390 using standards of approval contained in Subsection B2 below.

B. Approval Criteria. The decision to approve, approve with modification, or deny an application to annex property to the City shall be based on the following criteria:

1. All services and facilities are available to the area and have sufficient capacity to provide service for the proposed

annexation area; and

2. The applicable comprehensive plan policies and implementing ordinance provisions have been satisfied.

C. Assignment of comprehensive plan and zoning designations. The comprehensive plan designation and the zoning designation placed on the property shall be the City's zoning district which most closely implements the City's or County's comprehensive plan map designation. The assignment of these designations shall occur automatically and concurrently with the annexation. In the case of land which carries County designations, the City shall convert the County's comprehensive plan map and zoning designations to the City designations which are the most similar. A zone change is required if the applicant requests a comprehensive plan map and/or zoning map designation other than the existing designations. (See Chapter 18.380). A request for a zone change can be processed concurrently with an annexation application or after the annexation has been approved.

D. Conversion table. Table 320.1 summarizes the conversion of the County's plan and zoning designations to City designations which are most similar.

The City used a Type IV approval process. The City has capacity to provide all required services to the area to be annexed, and the applicable Comprehensive Plan Policies, including those in Chapter 10, have been satisfied. The properties being annexed already have City comprehensive plan and zoning designations, that have been adopted and imposed by the County. Ms. Russell specifically argued that the City lacks parks capacity in the area. However, the City has sufficient parks capacity throughout the City to provide service to its residents, including residents in the areas being annexed. The services listed in the Comprehensive Plan, water, sewer, storm sewer, streets, police and fire protection, are the essential services that must be available, and those services will be available to the newly annexed areas. Ms. Russell questioned the adequacy of the street system. The City Council finds that the street system is adequate to provide service and will remain adequate. If the properties are not annexed, they could still be developed consistent with the County zoning, which is the same as City zoning, so whether the properties are annexed or not does not affect the impact on the street system.

D. The areas to be annexed all have existing City zones that were established consistent with Table 320.1. The zoning is consistent with the Comprehensive Plan and applicable Community Development Code provisions.

Scott Miller

14. In addition to issues addressed in the "Issues Raised By More Than One Person" section of these findings, Mr. Miller stated a concern with an increase in taxes. Mr. Miller also argued that the consents received by the City are not consents.

    A. Mr. Miller does not own property being annexed. His property is outside the area proposed for annexation. His taxes will not increase as a result of the annexation. The property owners in the area to be annexed have consented to the annexation. Whether taxes may increase is not an applicable standard or criterion in deciding an annexation.

    B. For each of the annexations, the City has either the written consent of the property owners or a petition from the property owners to initiate the annexation. All are valid consents.

Lisa Hamilton Treick

15. In addition to issues address in the "Issues Raised By More Than One Person" section of these findings, Ms. Hamilton Treick argued that Measure 37 gives property owners rights that are violated by these annexations.

    A. Ms. Hamilton Treick does not own property that will be annexed by these annexations. All owners of property being annexed have consented to these annexations. The property owners or their representatives who testified expressly stated that they voluntarily consent to the annexations. One of them, Tom Weber, stated that he actively sought annexation to Tigard because of the value it brings to his property. Measure 37 is not an applicable standard or criterion for annexation.

16. Ms. Hamilton Treick also argued that the City has no authority to condition land use approvals or acceptance of land use applications on a consent to annexation.

    A. This is a challenge to final land use decisions that were not been appealed within the time allowed by statute. Those decisions cannot be collaterally attacked.

    B. The various agreements with the County and other urban service providers, including the Urban Services Intergovernmental Agreement and Tigard Urban Service Agreement, anticipate that the City will provide planning services and will ultimately annex Tigard's urban service area. Requiring annexation is not inconsistent with those agreements. Urban Service Agreement Section I.D provides that the City shall endeavor to annex certain areas, including all areas currently proposed for annexation. Requiring annexation consents effectuates this provision of the Urban Service Agreement. The Urban Services Intergovernmental Agreement gives Tigard all land use decision-making authority

over the area to be annexed. Land use authority includes the authority to impose conditions. The City has the authority to impose a condition of approval requiring consent to annexation when it receives a land use application for a property outside the City.

Individual Comments – Post-Hearing Written Submissions

Julie Russell

17. Ms. Russell again discussed general opposition to annexation in the Bull Mountain area, HB 2484, SB 887, Comprehensive Plan Policies 2.1.1.and 10.1.2, and CDC 18.320.020. The above findings address those arguments.

18. Ms. Russell also argues that the zoning is wrong and inconsistent with the Bull Mountain Community Plan. The areas have all been rezoned by the County and the zoning being applied is the zoning required by CDC 18.320. Furthermore, as demonstrated in the written testimony of John Marquart, there is little or no practical difference between Washington County R-6 and Tigard R-7 zoning, as applied.

19. Ms. Russell argues that not everyone who was entitled to receive notice actually received notice. The City provided notice as required by applicable regulations. While it is possible that some persons did not receive notice, the City complies with the notice requirements.

20. Ms. Russell complains about possible effects on other service providers. The City has not received any negative comments from other service providers. All service providers in the area have agreed that the area being annexed will be annexed to Tigard. Services will be provided as agreed to in the Urban Services Agreements entered into by the City and other service providers.

21. Ms. Russell argues that the annexation will interfere with the orderly and economic provision of public facilities and services. However, her argument appears to be that services can be provided without annexation. That does not mean that annexation will disrupt or interfere with service provision. The agreements between the service providers will ensure orderly and economic provision of services.

22. Ms. Russell argues that the Alberta Rider School property should not be annexed. None of her arguments relate to any applicable standard or criterion.

23. Ms. Russell opposes the Summit Ridge annexation as non-contiguous. The Summit Ridge area being annexed will be contiguous with the City on annexation.

24. Ms. Russell objects to the Annexation of Arlington Heights 3 on the grounds that the annexation will cause annexation to a homeowners association. That argument does not related to any applicable standard or criterion. Participation in a homeowner's association is a matter of contract between the parties and unrelated to a City's authority

to annex. Ms Russell also argues that the City cannot annex only part of a subdivision. No applicable standard or criterion prohibits annexation of part of a subdivision. Furthermore, Arlington Heights 3 is a separate subdivision from Arlington Heights 1 and 2.

LaVelle and Marie Day

25. The Days object to the annexation on the grounds that the annexation may interfere with efforts to annex to King City or to create a new city. This argument does not relate to any applicable criterion or standard. None of the Days' other arguments are based on applicable standards or criteria.

Jackie and Gary Kisling

26. The Kislings raise issues related to HB 2484 and HB 2722. Those bills are addressed in the above findings.

Henry Kane

27. Mr. Kane makes arguments against island annexations. None of the annexations are island annexations.

Lisa Hamilton-Treick and Tom Treick

28. Ms. Hamilton-Treick and Mr. Treick oppose the process in which the hearings on four annexations were combined as causing hardship on those who wish to appeal. Even if the hearings had not been combined, the hearings could have been, and most likely would have been held at the same meeting. Therefore, the appeals would have all been due at the same time. Combining the hearings allowed people to state their objections a single time so as to avoid multiple repeated testimony. All persons were given a full opportunity to address any issues related to any of the four annexations.

29. They also object to the boundaries as being irregular and question the voluntariness of the consents. These issues are addressed above.

30. They also oppose the transfer of Traffic Impact Fees to Tigard's TIF accounts. That is not a relevant issue and does not relate to any applicable standard or criterion.

Philip E. Decker

31. Mr. Decker opposes the annexations as not being contiguous. No property being annexed will be separated from the City by any intervening unincorporated territory. The annexations are of contiguous property.

32. Mr. Decker argues that ORS 222.115 allows annexation contracts only for contiguous parcels. ORS 222.115 does not require that property be contiguous at the time an

annexation contract is signed. One purpose of ORS 222.is to allow properties that are not contiguous to consent to annexation so that they can receive urban services immediately and be annexed later when intervening properties annex. The contiguity requirement applies only when the annexation becomes effective.

33. Mr. Decker argues that the areas being annexed are irregularly shaped. The shape of the area being annexed is not an issue.

34. Mr. Decker argues that previous annexations were improper. The previous annexations are final and have not been challenged. They cannot be collaterally attacked at this time.

Comments In Support

35. After the hearing, the City received several written comments in support of the proposed annexations, including statements from Sean Foushee, on behalf of the applicants for the Mountain View Estates, from John Marquart on behalf of the applicant for the Wilson Ridge annexation, and from Tom Weber, on behalf of the owners of the Arlington Heights 3 property, all of whom stated that the annexation applications were voluntary. Mr. Marquart and Mr. Weber addressed other issues, strongly supporting the annexations of their respective areas.

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CITY OF TIGARD, OREGON

ORDINANCE NO. 2005-_____

AN ORDINANCE ANNEXING 19.56 ACRES, APPROVING ALBERTA RIDER ELEMENTARY SCHOOL/SUMMIT RIDGE ANNEXATION (ZCA2005-00003), AND WITHDRAWING PROPERTY FROM THE TIGARD WATER DISTRICT, WASHINGTON COUNTY ENHANCED SHERIFF'S PATROL DISTRICT, WASHINGTON COUNTY URBAN ROADS MAINTENANCE DISTRICT, WASHINGTON COUNTY STREET LIGHTING DISTRICT #1, AND THE WASHINGTON COUNTY VECTOR CONTROL DISTRICT.

WHEREAS, the City of Tigard is authorized by ORS 222.120(4)(B) and 222.170 to initiate an annexation upon receiving consent in writing from a majority of the electors registered in the territory proposed to be annexed and written consent from owners of more than half the land in the territory proposed to be annexed; and

WHEREAS, the City of Tigard is authorized by ORS 222.120(5) and 222.520 to withdraw properties which currently lie within the boundary of the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District upon completion of the annexation; and

WHEREAS, the Tigard City Council held a public hearing on August 9, 2005 to consider the annexation of 38 parcels and portions of 18 additional parcels of land consisting of a total of 19.56 acres and withdrawal of said property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, the City Council left the record open for written submissions for an additional seven days after the hearing on August 9, 2005 and allowed a further seven days on August 23, 2005 for submission of responses to new evidence submitted during that time, as provided by ORS 197.763(6)(c); and

WHEREAS, pursuant to ORS 222.520(2) the City is liable to the Water District for certain debt obligations, however, in this instance the Water District has no debt for the City to assume, therefore, no option regarding the assumption of debt needs to be made; and

WHEREAS, pursuant to Metro 3.09, ORS 222.120 and 222.524, notice was given and the City held a public hearing on the issue of the annexation into the City and withdrawal of the annexed property from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District; and

WHEREAS, pursuant to ORS 222.524, the City must declare the withdrawal of annexed properties from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District by Ordinance; and

WHEREAS, the Tigard Development Code states that upon annexation, the zone is automatically changed to the City zoning most closely conforming to the County zoning; and

WHEREAS, the current zoning district is R-7, an existing City zone that has been adopted by the County and the zoning after annexation would remain R-7 so that no zone change is necessary, and by annexation the Comprehensive Plan of the City of Tigard goes into effect; and

WHEREAS, the annexation has been processed in accordance with the requirements of Metro 3.09 and has been reviewed for compliance with the Tigard Community Development Code and the Comprehensive Plan and the annexation substantially addresses the standards in Metro 3.09 regulating annexations; and

WHEREAS, the City Council has carefully considered the testimony at the public hearing and the written materials submitted after the hearing and determined that withdrawal of the annexed properties from the applicable service districts is in the best interest of the City of Tigard.

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The Council adopts the staff report and the document entitled "Supplemental Finding Concerning Compliance with ORS Chapter 222" as findings. In addition, Council adopts the document entitled "Findings in Response to Comments" as additional findings of fact.

SECTION 2: The Tigard City Council hereby annexes the parcels described in the attached REVISED **Exhibit "A"** and shown in REVISED **Exhibit "B"** and withdraws said parcels from the Tigard Water District, the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District.

SECTION 3: This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor and posting by the City Recorder.

SECTION 4: City staff is directed to take all necessary measures to implement the annexation, including filing certified copies of the Ordinance with Metro for administrative processing, filing with state and county agencies as required by law, and providing notice to utilities.

SECTION 5: Pursuant to ORS 222.120(5), the effective date of the withdrawal of the property from the Washington County Enhanced Sheriff's Patrol District, Washington County Urban Roads Maintenance District, Washington County Street Lighting District #1, and the Washington County Vector Control District shall be the effective date of this annexation.

SECTION 6: Pursuant to ORS 222.465, the effective date of the withdrawal of this property from the Tigard Water District shall be July 1, 2006.

SECTION 7: In accordance with ORS 222.180, the annexation shall be effective upon filing with the Secretary of State.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2005.

_____
Cathy Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2005.

_____
Craig Dirksen, Mayor

Approved as to form:

_____
City Attorney

_____
Date

ZCA2005-00003
ALBERTA RIDER/SUMMIT RIDGE SUBDIVISION

(Excluding Ms. Alberta Rider's Life Tenancy Area)

A tract of land situated in the Section 9, Township 2 South Range 1 West Willamette Meridian described as follows:

Commencing at a point northwest corner of the subdivision plat of Arlington Heights; thence N 01° 57' 48" E a distance of 13.03 feet; thence S 88° 04' 30" W a distance of 625.20 feet to **The True point of Beginning** of the Annexation being on the southerly right-of-way of SW Bull Mountain Road; thence S 01° 56'56" W a distance of 426.22 feet; thence S 88° 56' 17" E a distance of 212.83 feet; thence S 02° 00' 00" W a distance of 274.61 feet; thence N 88° 49' 24" W a distance of 336.20 feet; thence S 01° 15' 49" W a distance of 475.68 feet; thence S 87° 59' 46" E a distance of 303.50 feet; thence S 01° 15' 46" W a distance of 561.57 feet; thence N 87° 59' 46" W a distance of 303.50 feet; thence N 01° 15' 46" E a distance of 561.57; thence N 87° 59' 46" W a distance of 846 feet to the easterly right-of-way of SW 133rd Ave; thence N 01° 33' 29" E, along said right-of-way, a distance of 50.00 feet; thence S 87° 59' 46" E a distance of 221.31 feet; thence N 01° 21' 36" E a distance of 140.04 feet; thence S 87° 58' 20" E a distance of 220.90 feet; thence N 01° 15' 49" E a distance of 1185.00 feet to the southerly right-of-way of SW Bull Mountain Road; thence S 59° 18' 32" E, along said right-of-way, a distance of 433.01 feet; thence N 88° 04' 30" E, along said right-of-way, a distance of 158.32 feet to the point of beginning.

Excepting

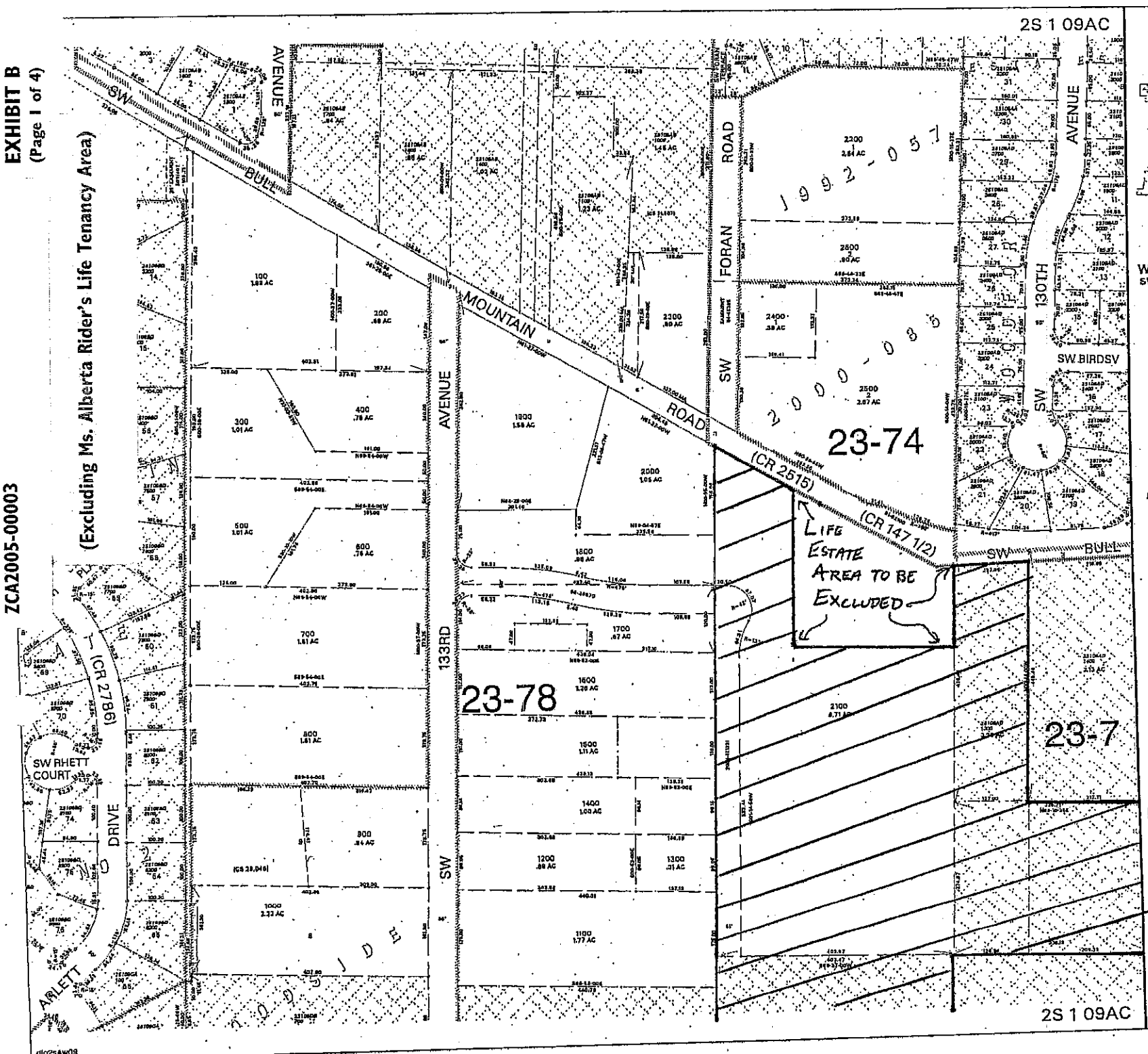
Commencing at a point northwest corner of the subdivision plat of Arlington Heights; thence N 01° 57' 48" E a distance of 13.03 feet; thence S 88° 04' 30" W, along said southerly right-of-way a distance of 737.52 feet to **The True point of Beginning** of the exception being on the southerly right of way of SW Bull Mouuntain Road; thence S 88° 04' 30" W, along said southerly right of way, a distance of 46.00 feet to and angle point in said southerly right of way; thence N 59° 18' 32" W, along said southerly right-of-way, a distance of 231 feet; thence leaving said southerly right-of-way, S 05° 34' 56" W a distance of 277 feet; thence N 85° 46' 31" E a distance of 277 feet; thence N 01° 55' 30" W a distance of 139 feet to the point of beginning.

I:\eng\johnrh\annex 2s109ac&ad 2100 1300.doc

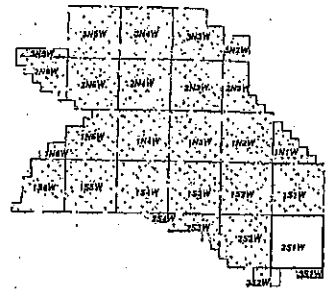
EXHIBIT B
(Page 1 of 4)

Alberta Rider/Summit Ridge Subdivision
ZCA2005-00003

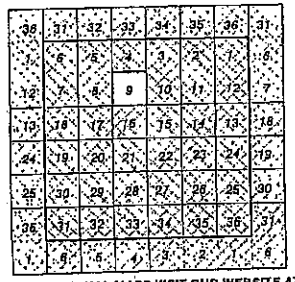
(Excluding Ms. Alberta Rider's Life Tenancy Area)



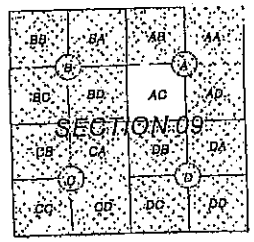
2S 1 09AC



WASHINGTON COUNTY OREGON
SW1/4 NE1/4 SECTION 09 T2S R1W W.M.
SCALE 1" = 100'



FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT
www.co.washington.or.us



Other maps for this annexation territory were not changed. This shows area that was excluded.

Assessment
CARTOGRAPHY
Taxation

PLOT DATE: November 30, 2004
FOR ASSESSMENT PURPOSES ONLY - DO NOT RELY ON FOR OTHER USE

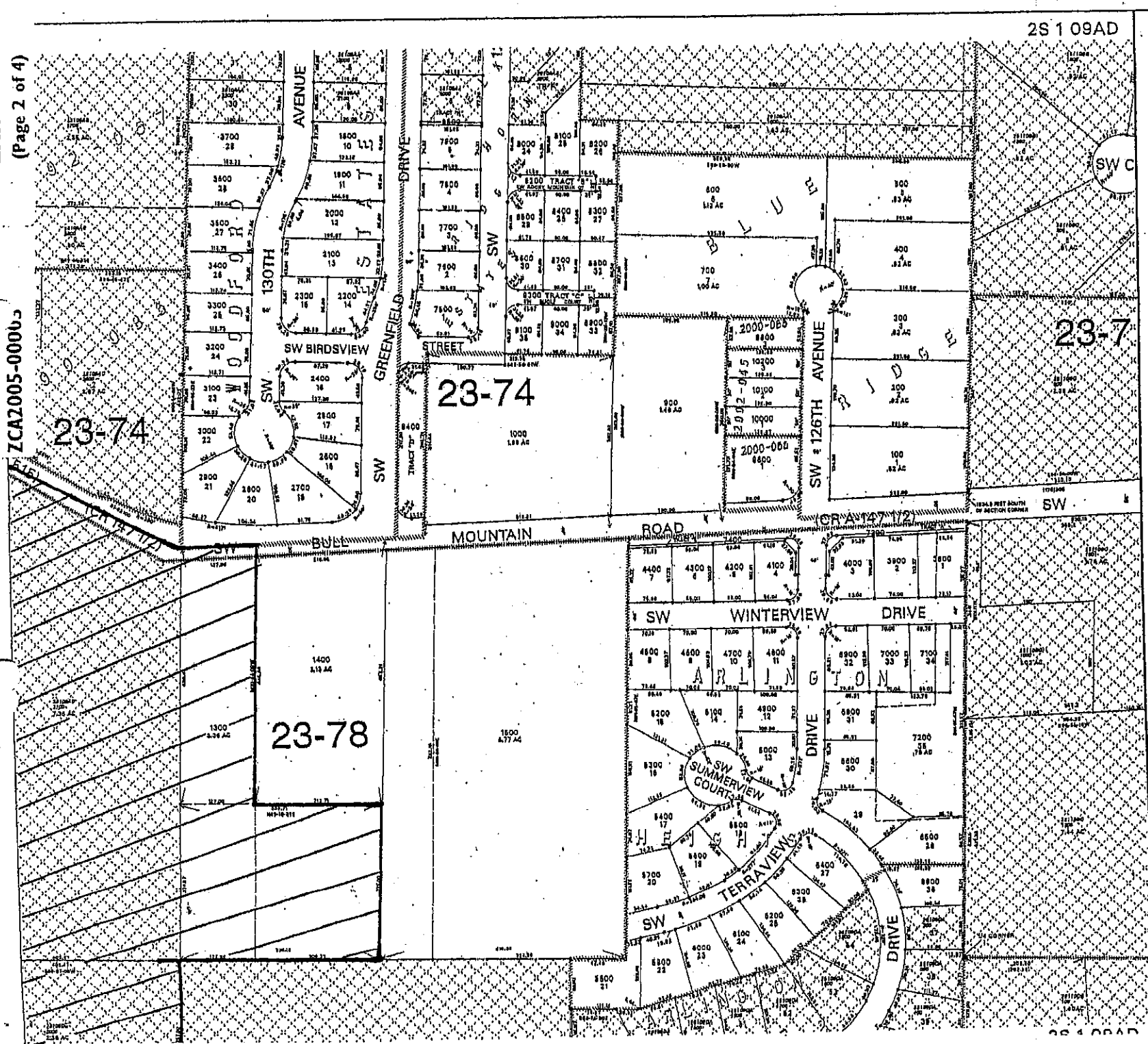
Map areas delineated by either gray shading or a cross-hatched pattern are for reference only and may not indicate the most current property boundaries. Please consult the appropriate map for the most current information.

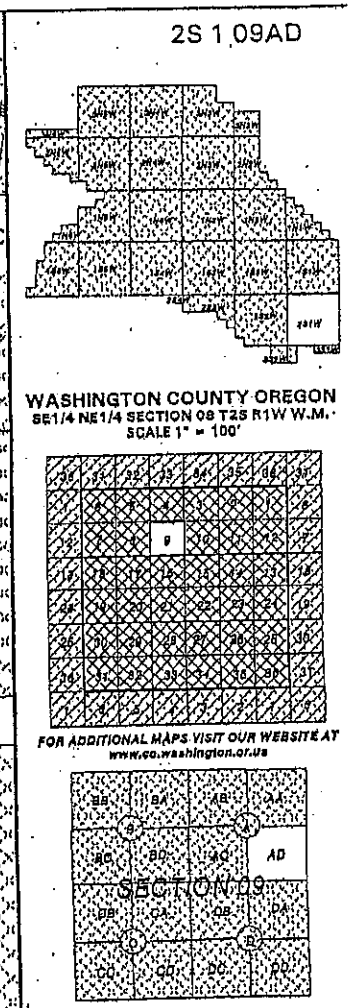
TIGARD
2S 1 09AC

dlc25AW09

EXHIBIT B
(Page 2 of 4)

Alberta Rider ...it Ridge
ZCA2005-0000...





Cancelled Taxlots For 2S109AD
1200,1201,1600,1700,5501,4700,5501,3801,1100,7101,
800,7201,8700,

Assessment
CARTOGRAPHY
Taxation

PLOT DATE: July 09, 2002
FOR ASSESSMENT PURPOSES ONLY - DO NOT RELY ON FOR OTHER USE

Map areas delineated by either gray shading or a cross-hatched pattern are for reference only and may not indicate the most current property boundaries. Please consult the appropriate map for the most current information.

TIGARD

EXHIBIT B
(Page 3 of 4)

Alberta Rider/Summit Ridge
ZCA2005-00003

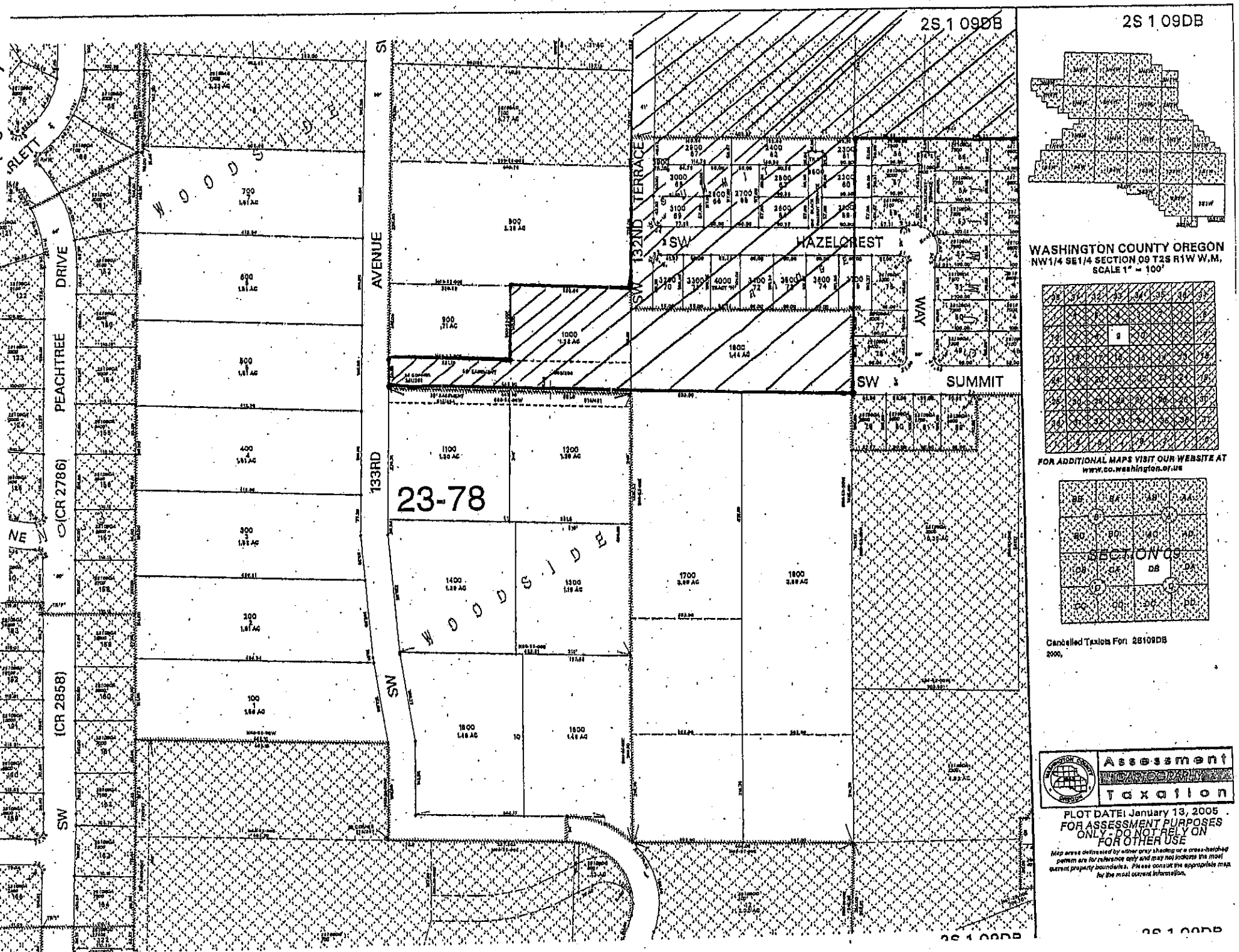
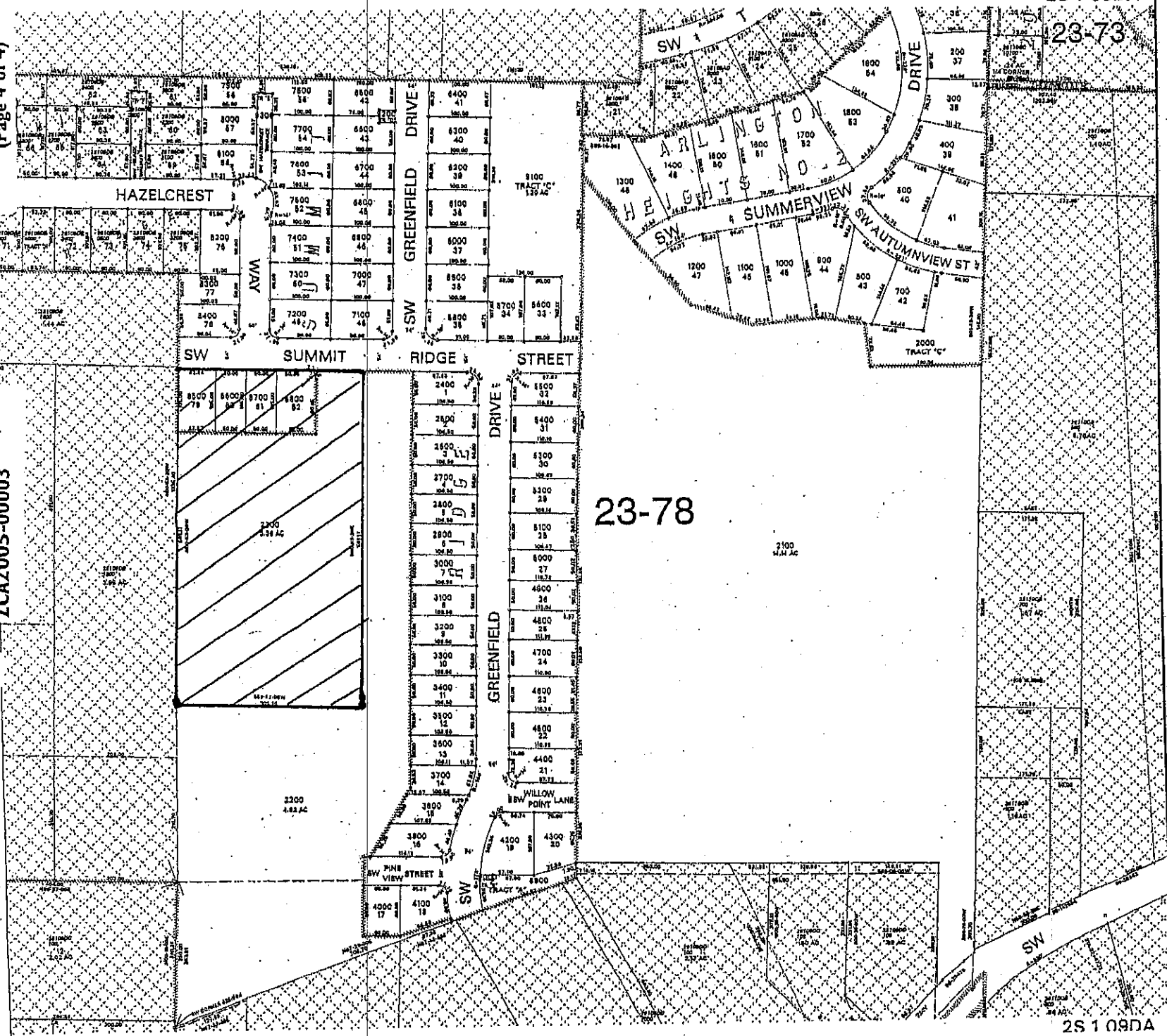
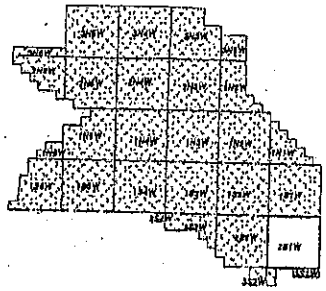


EXHIBIT B
(Page 4 of 4)

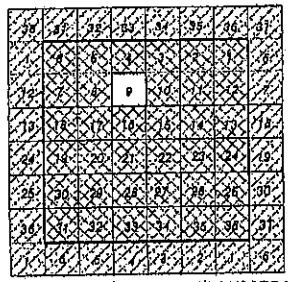
Alberta Rider/Summit Ridge
ZCA2005-00003



2S 1 09DA



WASHINGTON COUNTY OREGON
NE1/4 SE1/4 SECTION 09 T2S R1W W.M.
SCALE 1" = 100'



FOR ADDITIONAL MAPS VISIT OUR WEBSITE AT
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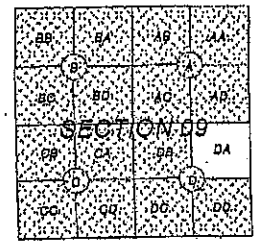


Cancelled Taxlots For: 2S109DA
800;100;

Assessment
Cartography
Taxation

PLOT DATE: January 20, 2005
FOR ASSESSMENT PURPOSES ONLY - DO NOT RELY ON FOR OTHER USE

Map areas delineated by either gray shading or a cross-hatched pattern are for reference only and may not indicate the most current property boundaries. Please consult the appropriate map for the most current information.

2S 1 09DA

EXHIBIT C

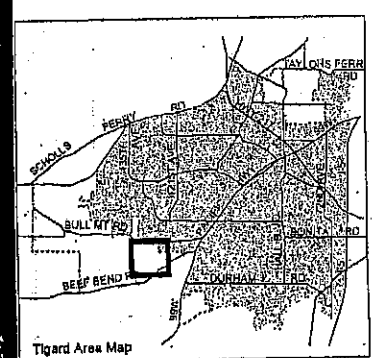
CITY of TIGARD

GEOGRAPHIC INFORMATION SYSTEM

VICINITY MAP

ZCA2005-00003

ALBERTA RIDER SCHOOL SUMMIT RIDGE SUB. ANNEXATION



N

0 100 200 300 400 500 Feet

1" = 382 feet

City of Tigard

Information on this map is for general location only and should be verified with the Development Services Division
13125 SW Hall Blvd
Tigard, OR 97223
(503) 639-4171
http://www.ci.tigard.or.us

ATTACHMENT 7

ZCA2004-00004 Mountain View Estates Annexation
ZCA2005-00001 Arlington Heights 3 Annexation
ZCA2005-00002 Wilson Ridge Annexation
ZCA2005-00003 Alberta Rider/Summit Ridge Annexation

Testimony Received After Close of the Public Record on 8/23/05
During 7-day Written Comment Period
Deadline for Additional Written Testimony: 5:00 p.m., August 30, 2005

1. E-mail from Julie Russell and attachment from Stephen Poage, received 8/30/05 at 4:14 p.m.
2. E-mail from Julie Russell and attachment from Stephen Poage, received 8/30/05 at 4:31 p.m.

/

From: "Julie Russell" <jarussell59@comcast.net>
To: "'Cathy Wheatley'" <CATHY@ci.tigard.or.us>
Date: 8/30/2005 4:15:31 PM
Subject: RE: FW: Annexation Testimony

Hi Cathy,

I am submitting my response to the Annexation Hearings of the four properties on Bull Mountain.

I oppose the annexation due to the map showing errors including portions of Bull Mountain Road and Beef Bend Road. Property owners surrounding the roads were not notified of this proceeding. Tigard admits the maps could have included errors as the position for updating the maps is vacant and the maps have not been updated for several months. Tigard also admits that it is possible all property owners did not receive this notice regarding this land use decision.

The original map did include Alberta Rider's property, and she did not consent to annex. Alberta Rider was the only elector in the Alberta Rider School Property, and I believe Tigard is trying to avoid ORS 222.120. Alberta Rider owned all of the property for the Alberta Rider annexation. I don't believe Tigard can legally annex a portion of the property without Alberta Rider's consent.

Tigard states it has authority pursuant to ORS 222.125, but I have attached an e-mail from Steven Poage. Steven Poage told the Tigard-Tualatin School Board that the school would not receive city services if it did not annex. But this was not the case, all services are provided by districts, and the requirement to annex was a condition of final approval. Tigard would not allow the final inspection and prevent the school from opening if they did not agree to annex. I don't believe Tigard has legal authority to require this.

I don't believe Tigard has legal authority to require consents to annex, due to the fact that Tigard is currently a sub-contractor for Washington County, per the Urban Service Agreement and the Intergovernmental Agreement. Tigard is currently only providing building inspections and permits. Tigard has publicly stated it is not responsible for long term planning for unincorporated Bull Mountain.

Tigard and Washington County have identified Bull Mountain as being park deficient. So annexing additional territory only creates more of a deficient area. The Public Works Directory Dennis Koellermeier presented a map to the Tigard City Council showing the areas in the city and on Bull Mountain that did not have parks within 1/2 mile, and are considered deficient. The Bull Mountain Community Plan identified the area as being park deficient in 1983, and no parks and open space have been developed and set aside for this area, with the exception of Cache Creek, which is a steep ravine on the north side of Bull Mountain that is not usable at this time. Additional annexation only adds to the problem.

Highway 99 has been identified as an area of special concern in the Washington County Transportation Plan. ODOT has stated that every intersection on Hwy 99 through Tigard is at or near failure. Washington County Issue Paper 14 regarding a Public Facilities Strategy, states that

the county recognizes that Hwy 99 is a problem, but currently there are no solutions to fix it. The county staff state the reason they cannot implement a public facilities strategy, is the fact that the statute requires a solution within two years. The county does not have a solution for Hwy 99 within two years. Tigard does not require developers to submit traffic impact studies on Hwy 99. So no one is currently looking at the overall impact of traffic on Hwy 99. Additional annexations only add to the already overburdened Hwy 99.

Respectfully,

Julie Russell
-----Original Message-----
From: Cathy Wheatley [mailto:CATHY@ci.tigard.or.us]
Sent: Friday, August 26, 2005 12:14 PM
To: jarussell59@comcast.net
Cc: Craig Prosser; Jim Hendryx; garyf@rccb.com
Subject: Re: FW: Annexation Testimony

Julie,

In accordance with your request, on August 23, 2005 the City Council made the following motion:

...to reopen the record and leave it open for seven days to allow a response to the Annexation Responses from Staff and the City Attorney, pursuant to ORS 197.763(6)(c). The responses shall be confined to addressing issues raised by the new evidence in those documents, if any. ...further move to continue the hearing to the date certain of September 13, 2005, at 7:30 pm here in the City Council chambers.

The written testimony as described above must be received by staff at City Hall by Tuesday, August 30, 2005, 5 p.m.

Cathy

>>> "Julie Russell" <jarussell59@comcast.net> 08/23 11:21 AM >>>
Dear Council and Cathy,

Since I am not able to attend the City Council Meeting tonight, I am requesting the record regarding the four annexations be held open for an
additional 7 days to allow time to review the staff report and the City
Attorney response to my testimony.

Thank You,

Julie Russell

From: Julie Russell [mailto:jarussell59@comcast.net]
Sent: Tuesday, August 16, 2005 11:58 AM
To: 'cathy@ci.tigard.or.us'; Craig Dirksen; Nick Wilson; Sydney Sherwood;
Tom Woodruff
Subject: Annexation Testimony

Dear Cathy,

Please submit my written testimony regarding the annexation of the four
properties on the agenda last week. My testimony is attached.

Best Regards,

Julie Russell

CC: '"Craig Prosser"' <CRAIG@ci.tigard.or.us>, '"Jim Hendryx"' <JIMH@ci.tigard.or.us>, <garyf@rccb.com>

Ms. Russell,
I am sorry about the delay in getting back to you. I began looking into your questions about which public utility services would not be provided to the school if it were not annexed into the City of Tigard, and this led me to a conversation with the district's land use planner, who prepared our Conditional Use Permit application. He reminded me that condition # 39 of the CUP approval states that "prior to final building inspection (occupancy), the applicant (school district) shall obtain annexation approval". Therefore, to open and operate the new school, annexation was always a requirement, (and not an option) for the school district. I know that this may not answer all your questions about utility connections, etc., however those items are probably best answered by those agencies supplying the respective utility service.
Best regards, Stephen Poage, TTSD

2

From: "Julie Russell" <jarussell59@comcast.net>
To: '"Cathy Wheatley"' <CATHY@ci.tigard.or.us>
Date: 8/30/2005 4:32:16 PM
Subject: FW: FW: Annexation Testimony

Hi,

Sorry I have a couple more items to mention.

Tigard states that consents that were provided in connection with a land use hearing needed to be challenged during the land use hearing. I oppose this, how would the average citizen know that the annexation could not be challenged at the annexation hearing?

I also oppose the Wilson Ridge Annexation and the land use consent to annex, but when could this be challenged? Since the land use approval has not been complete? Why is the Wilson Ridge Annexation taking place before the land use approval, and why are the other annexations taking place after? I also challenge the issue of Wilson Ridge being contiguous to Tigard on the west side of the property. No one I know has been aware of any property being annexed to Tigard in this area, and no maps show this being City of Tigard property.

I believe the developers are always going to agree to annex as Tigard can make the development process difficult if they chose not to agree. None of these developers are the end users or the electors in these territories. So I challenge the legal authority of allowing the developer to make a long term governance decision for the future property owner.

Julie Russell

-----Original Message-----
From: Julie Russell [mailto:jarussell59@comcast.net]
Sent: Tuesday, August 30, 2005 4:15 PM
To: 'Cathy Wheatley'
Cc: 'Craig Prosser'; 'Jim Hendryx'; 'garyf@rccb.com'
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Best regards, Stephen Poage, TTSD

AGENDA ITEM # _____
FOR AGENDA OF September 13, 2005

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Grabhorn Ballot Measure 37 Claim

PREPARED BY: Dick Bewersdorff DEPT HEAD OK _____ CITY MGR OK _____

ISSUE BEFORE THE COUNCIL

The City Council is being asked to consider a Ballot Measure 37 claim for compensation or waiver of zoning regulations for property located along SW Scholls Ferry Road in Tigard.

STAFF RECOMMENDATION

Adopt an ordinance granting a waiver of R-25 zoning restrictions to allow a commercial shopping center, various tenants/uses, as well as retail sales, vehicle fuel sales and signage of the C-G General Commercial zone for the Grabhorn property at 135th and Scholls Ferry Road subject to applying for and receiving site development review approval.

INFORMATION SUMMARY

Burton Grabhorn is seeking a waiver and/or change in the underlying zoning and comprehensive plan designation on a 10.45 acres site located at the corner of SW 135th Avenue and Scholls Ferry Road. Ballot Measure 37 established a process whereby a property owner or family member who acquired property prior to the adoption of land use regulations can make a claim if the land use regulation has restricted the use of property and reduced the market value of the property. The unit of government responsible for the regulation must either pay compensation for the reduced property value or waive the regulation. The City Attorney provided training for the City Council on February 5, 2005 and August 23, 2005 on the basic provisions of Ballot Measure 37. This is the first claim to come before the Tigard City Council. One other application is pending. The property is zoned R-25 (Medium-High Residential). The property is one of the last two large vacant parcels zoned R-25 that have not been approved for development. Other than an attached housing development and a day care center that were approved on the original parcel no other development has occurred on the site. In 1995 Haggens Corporation applied for a comprehensive plan and zone change to allow construction of a super market on the site. The request was denied by the City Council because of the potential loss of housing density.

The applicant's representative Roger (Mike) Van provided a market analysis that indicates a net difference in value between commercially zoned property and the recent sale of residential property in the R-25 designation results in a difference of $4,462,360. Mr. Grabhorn acquired the property on September 22, 1952. This not only preceded the City's zoning but the City's incorporation in 1961. The claimant states that it is his preference for a waiver to allow C-G or C-C commercial zoning with vehicle fuel sales permitted. The claimant also cites access restrictions on all abutting streets and sign restrictions. The applicant's market analysis does not address the reduction in market value as a result of access restrictions or sign requirements.

In regard to access there are options that meet code requirements to provide access in addition to access from Scholls Ferry Road where the claimant has a settlement from ODOT. The access requirements do not restrict the use of the property and such a claim is not ripe since no access has yet been prevented to the property in question. Signage according to the C-G zone standards are the most permissive in the City and should provide for advertising any of the claimants desired uses.

Should the City Council choose to grant the waiver, it is suggested that the waiver be granted to the person, Burton Grabhorn, and not the land and be specific to allow retail and vehicle fuel sales. Once the site development review application is filed, the application will be processed under the C-G standards even if the property is transferred after the site development review application is filed, and development may occur consistent with any approved site development review. Once the property is developed, it may continue to be used for retail and vehicle fuel sales, even if there are changes in ownership or tenants. Once Mr. Grabhorn ceases to be the owner, however, any expansion or major modification beyond development applied for during his ownership shall be subject to the rules in effect at the time of change in ownership. It is expected that the legal issues related to such a waiver will be determined in the future as similar such issues are decided by the courts and legislature.

OTHER ALTERNATIVES CONSIDERED

1. Deny the waiver
2. Pay compensation to the land owner in which case the City may want to obtain its own market assessment of the amount of compensation.
3. Conduct hearings for a comprehensive plan and zone change to C-G General Commercial.

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Ballot Measure 37 issues in this and other cases do not conform to existing provisions of the City's code and while providing for business and economic development could also run counter to housing goals and community character and livability goals.

ATTACHMENT LIST

1. Attachment 1 – Ordinance
2. Attachment 2 – Staff Report
3. Attachment 3 – Applicant's Materials

FISCAL NOTES

The applicant provided a $1,000 deposit to cover application review costs. This deposit will be refunded to the applicant if the claim or waiver is granted. The are no budgeted funds to pay compensation.

CITY OF TIGARD, OREGON

ORDINANCE NO. 05-_____

AN ORDINANCE ADOPTING FINDINGS TO GRANT A BALLOT MEASURE 37 WAIVER OF THE R-25 ZONING RESTRICTIONS TO BURTON GRABHORN FOR 10.5 ACRES AT THE INTERSECTION OF SCHOLLS FERRY ROAD AND 135TH AVENUE (LOT 63, HAWK'S BEARD TOWNHOMES, AND TAX LOT 14500, WCTM 1S133AC) TO ALLOW A COMMERCIAL SHOPPING CENTER, VARIOUS TENANTS/USES, AS WELL AS RETAIL SALES, VEHICLE FUEL SALES AND SIGNAGE OF THE C-G GENERAL COMMERCIAL ZONE SUBJECT TO APPLYING FOR AND RECEIVING SITE DEVELOPMENT REVIEW APPROVAL (M372005-00003).

WHEREAS, The voters of the State of Oregon passed Ballot Measure 37 in 2004; and

WHEREAS, Ballot Measure 37 provides for the responsible governing body to either pay compensation for reduced property value or waive the regulations where property is owned prior to the adoption of land use regulations; and

WHEREAS, a claim was made by Burton Grabhorn in the amount of $4,562,360 as the net difference in the value of the property under R-25 medum-high residential zoning versus potential commercial zoning; and

WHEREAS, Mr. Grabhorn has owned the property since September, 1952 preceding the present zoning as well as City incorportation;

NOW, THEREFORE, THE CITY OF TIGARD ORDAINS AS FOLLOWS:

SECTION 1: The attached staff report and applicant's statement are hereby adopted as findings.

SECTION 2: A waiver from the R-25 zoning requirements is hereby granted to Burton Grabhorn to allow a commercial shopping center to be sited at the location described in the Title to this ordinance. The commercial shopping center may include retail uses, vehicle sales and other uses allowed in the C-G General Commercial zone. Site development review is required before actual development and the review shall apply the standards of the C-G zone for all development, including signage. Although the waiver is granted to Burton Grabhorn, once the site development review application is filed, application will be processed under the C-G standards even if the property is transferred after the site development review application is filed, and development may occur consistent with any approved site development review. Once the property is developed, it may continue to be used for retail and vehicle fuel sales, even if there are changes in ownership or tenants. Once Mr. Grabhorn ceases to be the owner, however, any expansion or major modification beyond development applied for during his ownership shall be subject to the rules in effect at the time of application.

SECTION 3 : This ordinance shall be effective 30 days after its passage by the Council, signature by the Mayor, and posting by the City Recorder.

PASSED: By _____ vote of all Council members present after being read by number and title only, this _____ day of _____, 2005.

_____
Catherine Wheatley, City Recorder

APPROVED: By Tigard City Council this _____ day of _____, 2005.

_____
Craig Dirksen, Mayor

Approved as to form:

_____
City Attorney

_____
Date

Agenda Item:
Hearing Date: September 13, 2005 Time: 7:30 PM

STAFF REPORT TO THE CITY COUNCIL FOR THE CITY OF TIGARD, OREGON

CITY OF TIGARD
Community Development
Shaping A Better Community

180-DAY CLAIM PROCESSING PERIOD = 12/7/2005

SECTION I. CLAIM SUMMARY

FILE NAME: GRABHORN PROPERTY COMPENSATION CLAIM
CITY CASE NO: MEASURE 37 CLAIM (M37) M372005-00003

CLAIMANT/ OWNER: Burton Grabhorn
14577 SE Anderson Road
Clackamas, OR 97011

CLAIMANT'S REPRESENTATIVE Roger (Mike) Van
6860 SW Boeckman Road
Wilsonville, OR 97070

CLAIM: The claimant seeks a waiver and/or change in the underlying zoning and comprehensive plan designation on a 10.45 acre site from the present high-density R-25 residential zoning to C-C or C-G commercial zoning that would permit vehicle fuel sales and multiple retail tenants. The claimant is also seeking waiver to access restrictions and sign requirements. The amount claimed as compensation without such waiver or change is $4,562,360.00

AFFECTED REGULATION: Residential R-25 zoning; Comprehensive Plan designation as residential; Transportation System Plan and Development Code access restrictions; any other zoning and building code restrictions or overlay zones that preclude a commercial use; sign code restrictions.

ZONING DESIGNATION: R-25: High-Density Residential District.

LOCATION: Lot 63, Hawk's Beard Townhomes; WCTM 1S133AC, Tax Lot 14500. On the south side of SW Scholls Ferry Road, between SW 130th and 135th Avenue.

APPLICABLE CODE CRITERIA: Municipal Code Chapter 1.20.

SECTION II. STAFF RECOMMENDATION

Staff recommends that the City Council review the following report and determine whether the claims are valid. Staff further recommends that City Council opt for a waiver of the regulations versus compensation as described in the conclusion section of this report.

SECTION III. BACKGROUND

The subject parcel is one of the last large vacant high density multi-family properties left in the City of Tigard. The parcel was the subject of a comprehensive plan amendment application by Haagens (Brior Development) from R-25 to G-G in 1995 (CPA 95-03). That request was denied by the City Council. The potential housing impact is a loss of approximately 260 units. At the time of that application, Metro's required housing target capacity of 10 units per acre was narrowly met at 10.46 units to the acre. The Haggens proposal would have reduced the units per acre to 10.36. No updated figures for overall housing density are available. Conversion of this property may have impacts to the City's ability to comply with Title 3 of Metro's Code. A zone change request for a similarly zoned property across the street was withdrawn in 1996 by another applicant after early deliberations from Council indicated a denial was impending, based in part due to the lost potential for housing.

SECTION III. APPLICABLE CRITERIA AND FINDINGS

Section 1.20.030 states a property owner wishing to make a claim against the City under Measure 37 shall first submit a claim to the City. A claim under Measure 37 must be in writing and include:

A. Identification of the affected property. Identification may be by street address, subdivision lot number, tax lot number, or any other information that identifies the property.

The claimant identifies the property as "SW Scholls Ferry Road, Tax Map and Tax Lot 1S133AC 14500, Subdivision Lot 63, Hawk's Beard Townhomes".

B. The name and contact information of the person making the claim, the date the Claimant acquired the property, and, if applicable, the date that a family member of Claimant acquired the property and the names and relationships of family members that are previous owners.

The name and contact information of the person making the claim is Burton Grabhorn, 14577 SE Anderson Road, Clackamas, OR 97011, (503) 658-7075. The property was acquired by the claimant on September 22, 1952 as shown in the Warranty Deed for the property.

C. A list of all persons with an ownership interest in or a lien on the property.

The title report identifies the claimant as the sole owner, and no liens on the property.

D. Identification of the regulation that is alleged to restrict the use of the affected property and a statement describing how the restriction affects the value of the property.

The claimant has generally identified the Residential R-25 Zoning, the Comprehensive Plan designation as residential, access restrictions on all abutting streets, sign code restrictions, and "any other zoning and building code restrictions or overlay zones that preclude a commercial use."

There is some question as to whether this is sufficient detail to assess the claim, but on the other hand, it may be onerous to require a list detailed to the extent of specifying each particular code section, particularly in this case since the ownership predates the entire comprehensive plan, zoning designations, and all other city land use restrictions.

E. A statement whether the Claimant prefers compensation or a waiver, suspension or modification of the regulation, and a statement describing the extent to which the regulation would need to be waived, suspended or modified to avoid the need for compensation. A description of the proposed use must be provided.

The claimant states that his preference is for a waiver, "and/or receive a commercial zoning such as C-C or C-G with vehicle fuel sales permitted." The regulation would need to be waived, suspended or modified to allow a "commercial shopping center, various tenants/uses. All retail sales." The C-C zone and C-G zone allow vehicle fuel sales as a conditional use.

F. The amount claimed as compensation and documentation supporting the amount. The documentation shall include a market analysis, an appraisal, or other documentation at least equivalent to a market analysis.

The claimant has provided a Market Analysis prepared by Mike Van Investment Real Estate. The market analysis compares similar sales in the area and the recent sale of a portion of the subject property to determine a net difference in value between commercially zoned property and the recent sale of the residential property. This analysis results in a difference of $4,562,360.00. This analysis is provided in the applicant's attached materials.

G. The name and contact information of the Claimant's authorized representative or representatives, if applicable.

The claimant's representative is Roger (Mike) Van, 6860 SW Boeckman Road, Wilsonville, OR 97070. (503) 685-9283.

Section 1.20.080 outlines the criteria for making a decision on the compensation claim. In deciding the claim, the Decision Maker may take any of the following actions:

<u>Deny the claim</u> based on any one or more of the following findings:

a. The regulation does not restrict the use of the private real property.

The regulation cited includes the residential zoning districts which lists allowable uses. Prohibited uses on this list include general commercial uses. There are no valid use variance procedures to permit the desired use (retail and vehicle fuel sales) on the property. The regulation cited (residential zoning and comprehensive plan designation) is a clear restriction on the desired use (commercial) of the property.

The claimant also cites access restrictions on all abutting streets. One of these streets, SW Scholls Ferry Road is a State Highway with access controlled by ODOT (see criteria "i" below). Staff opines that a *complete* lack of access would restrict the uses on the property, or restrictions that would prevent required access for the use proposed, for example a commercial development that requires two accesses where only one is allowed, would restrict the use of property. But in this case, the applicant has access from SW Scholls Ferry Road via a settlement with ODOT, and there are points along the frontage that would meet current code requirements for access. Based on this, staff finds that a claim based on general "access restrictions" is first, not a restriction on the use of the property that prohibits a particular use of the property or makes that use only permissible under certain conditions. Second, the claim is not ripe, as no access has been prevented to the property in question (see criteria "j" below). And third, the claimant has not shown the reduction in property value based on a reduced number of accesses, the specific number as yet unknown. The market analysis only examines comparable types of commercial real estate uses in comparison to the uses presently allowed.

The claimant cites sign restrictions. Signage, while not customarily a primary use on a site, may be considered a use. Since the claimant has owned the property prior to any restrictions on signage existed, any subsequent regulation would restrict the use (whether primary or subordinate) on the property. However, as described later, the claimant's market analysis has not shown a reduction in the value of the property based on any particular sign restrictions. Sign restrictions promote public safety and prevent nuisances.

b. The fair market value of the property is not reduced by the passage or enforcement of the regulation.

The claimant has submitted a market analysis that is current and includes relevant data to determine the difference in value from the property's present high density residential designation (R-25) to the desired C-G or C-C zoning. This market analysis concludes that the net difference in value for the nearly 10½ acre site is $4,562,360.00.

The claimant has not shown a reduction in property value from sign or access restrictions.

c. The claim was not timely filed.

The claim was filed within two years of passage of Measure 37. It was a timely filing.

d. The Claimant is not the current property owner.

According to the title information, the claimant is the current property owner.

e. The Claimant or family member of Claimant was not the property owner at the time the regulation was adopted.

The claimant has owned the property since September 22, 1952. The City was incorporated in 1961. The property was annexed into the City in 1987. The Claimant owned the property at the time the regulation was adopted.

f. The regulation is a historically and commonly recognized nuisance law or a law regulating pornography or nude dancing.

The desired zoning, C-G, permits Adult Entertainment as a conditional use. If the claim is granted, this specific use could be prohibited for this parcel.

Access restrictions relate to traffic safety. Generally, regulations that protect public safety are considered "nuisance laws".

Sign restrictions are not likely to be upheld as a historical and commonly recognized nuisance law. However, two of the stated purposes from the sign code are "to accommodate the need of sign users while avoiding nuisances to nearby properties" and "to minimize distractions for motorists on public highways and streets." Therefore depending on the type and extent of signage, the sign could possibly be deemed a nuisance. To determine whether the regulation was a historically and commonly recognized nuisance law, a specific sign proposal would need to be evaluated. It can be inferred however, that any signage that was permissible in the C-G commercial zone would not constitute a nuisance, since it is allowed elsewhere in the City, and in this particular case, the site is nearby other commercial signage and lies along an arterial route. An unexpected introduction of commercial signage, say in the heart of a residential neighborhood, could constitute a distraction to drivers or cause glare onto adjacent parcels and hence be considered a nuisance.

g. The regulation is required by federal law.

There are no known federal regulations that would require the specific use in the specific location. There are likely restrictions as to the placement of the vehicle fuel sales in relation to other adjacent properties, but these are not known to staff and are typically enforced by DEQ or EPA agencies.

The regulations related to access restrictions are not known by staff to be based on federal requirements.

The regulations related to signage restrictions are not known by staff to be based on federal requirements.

h. The regulation protects public health and safety.

Allowing retail uses or gas stations (that otherwise conform to other safety and nuisance regulations) is not a matter of public health or safety as the City clearly has examples of such uses throughout the City and still permits such uses. There are locational criteria that were established for commercial zones in order to protect neighborhoods from incompatible uses and nuisances typically associated with certain commercial type uses.

Access restrictions exist to protect the public in the form of traffic safety, to reduce conflicting turning movements as well as reduce conflicts between pedestrians, bicyclists, and motorists. But, here again, the claimant has not proposed a specific design, so the most that can be said is that the regulation requested to be waived protects public safety. The claimant would need to show through a detailed design, that the proposed access would still be safe as related to these standards.

As discussed previously, some sign restrictions relate to safety, but most are aesthetic protections on public welfare. The claimant has not specifically identified the regulation to be modified, and it would be irresponsible of the City to waive all signage restrictions absent a more detailed assessment of impacts on safety. The claimant would need to show through a detailed design, that the proposed signage would not cause impacts to traffic or general public safety.

i. The City is not the entity responsible for payment. The City is not responsible if the challenged law, rule, ordinance, resolution, goal or other enactment was not enacted or enforced by the City.

The City may not have originally designated the property for residential use. Since this property was in the unincorporated county up until its annexation in 1987, and zoning was generally instituted in the 1970's, it is likely the county had originally designated the property for residential use. The City, upon annexation likely continued this designation but adopted the nearest conforming zone for high density residential. Nevertheless, the discussion is moot, since the City enacted the present zoning designation, and is the jurisdiction responsible for enforcing the rules being challenged.

j. The City has not taken final action to enforce or apply the regulation to the property for which compensation is claimed.

No detailed development plan or land use proposal has been reviewed or final action taken on to apply the challenged regulations. The City had issued notices of infractions based on improper signage on the site previously, but the thrust of this compensation claim is based on the desire for commercial zoning or permission to develop retail uses. Signage rules are also listed, but the compensation analysis does not provide any relevant information pertaining to this regulation. Staff notes that it is clear that a request for retail development under the present zoning would not be approved without a waiver of those rules, and suggests that a development plan be filed as further described in this report to determine to what extent the regulations in fact affect the property.

k. The City has not established a fund for payment of claims under Measure 37.

No such fund has been established at this time.

l. The Claimant is not legally entitled to compensation for a reason other than those listed in subsections a through k.. The basis for this finding must be clearly explained.

Staff finds no other reasons, aside from those already listed, to deny the claim.

2. Pay compensation, either in the amount requested or in some other amount supported by the evidence. If the City pays compensation, the City shall continue to apply and enforce the regulation. Any compensation shall be paid from funds appropriated for that purpose. The City may require any person receiving compensation to sign a waiver of future claims for compensation under Measure 37 and the City may record that waiver with the County Recorder.

Under Measure 37, only the current property owner is entitled to a waiver, and the waiver is limited to specific property. However, to properly implement Measure 37, the property owner must be able not only to develop the property, but to transfer the developed property to a third party, but without crating any Measure 37 rights in the new owner. Staff proposes that the waiver be to the person, Mr. Grabhorn, but that any development resulting from applications filed during Mr. Grabhorn's ownership be allowed to be built and maintained even if transferred. If the property is sold, expansions and major modifications would be subject to the standards in effect at the time of application. The City Council will need to make a determination of whether funds may be appropriated to pay the claim. Staff finds that the evidence supports the amount requested, but suggests that the City conduct its own market analysis prior to paying any such a claim.

3. Waive or not apply the regulation to allow the owner to use the property for a use permitted at the time the Claimant acquired the property.

The City Council shall decide whether to pay the claim or waive the regulation. Staff recommends that should a waiver be granted, it shall run with the person, not the land, and shall be a specific exemption to allow retail uses and vehicle fuel sales in the R-25 zone for that parcel as it presently is configured.

4. Modify the regulation so that it does not give rise to a claim for compensation. Any such modification shall be for the specific property only unless the City follows the procedure for a legislative land use decision.

Insofar as waiving the restriction on the particular use of the property, staff opines that the modification shall apply only to this property, but shall run with the claimant and his qualifying heirs, not run with the land. Site Development Review procedures should be applied to application by Mr. Grabhorn for retail development on the site, and the proposal will be subject to standard application of other development code regulations to the extent that they do not prevent the retail use from being established. The applicant should also be required to submit signage details with the SDR application, so that staff may apply the rules generally governing C-G zone signage. This will avoid the need to file a new Measure 37 claim prior to obtaining signage. Staff will need to make findings regarding the signage based on whether or not the proposed signs impact public safety, or constitute a nuisance.

With regard to the access restrictions, staff believes that there are opportunities for conforming points of access on site, and recommends that a waiver not be granted until it can be clearly shown that the particular access restriction prevents the desired use from occurring on the property.

5. Conditionally waive or suspend the regulation subject to receipt of a defined amount of contributions toward compensation by a specified date from persons opposed to the waiver or suspension, such as persons who believe they would be negatively affected by waiver or suspension, with the waiver or suspension being granted if the defined amount of contributions is not received by the specified date. If the contributions are received, compensation shall be paid within 180 days of the date the claim was filed. The specified date shall allow the City time to process the contributions and pay compensation.

No contributions for compensation have been identified at this time.

The Decision Maker may take other actions it deems appropriate in individual circumstances, may modify the listed actions, and/or may combine the listed actions, consistent with Measure 37. The Decision Maker may negotiate an acceptable solution with the Claimant or may direct staff to negotiate with the Claimant. In the event that the Decision Maker directs staff to negotiate, the matter shall be set for further action by the Decision Maker no less than 175 days from the date of the notice of claim became complete. The Council shall take final action within 180 days of the claim. The Decision Maker shall take actions 2 through 5 only if it determines the claim is valid.

The Staff recommendation is a combination of the above actions: waive the regulations related to the use restriction to allow the claimant to establish retail sales and vehicle fuel sales on site; condition this waiver on the stipulation that the exemption run with the claimant for the specific parcel as configured; require standard application of the site development review procedures and development standards; and allow signage that conforms to the C-G or C-C commercial zones, subject to a finding that public safety is not affected and a nuisance is not created; deny the claim for access restrictions as untimely and not substantiated. No actual compensation is recommended under this scenario.

A decision by a Decision Maker other than Council shall not be a final decision, but shall be a recommendation to Council.

This report represents only a recommendation to the City Council and is not a final decision of the City.

SECTION IV. CONCLUSION

Staff finds that there are three elements of this claim: allowable use; access restrictions; signage restrictions. Based on the information presented by the claimant and the findings contained in this report, staff finds merit in the claim for permissible uses, and concludes that this claim is valid. The fair market analysis is based on current and sound market data, and while not making a judgment on the specific numbers, staff believes that the amount of compensation requested is roughly accurate.

With regard to the access restrictions, staff finds the claim should be denied based on the claimants failure to properly substantiate the claim with a market analysis, the fact that the restriction is not a restriction on use, and that the city has not applied or enforced this restriction on this property. Moreover, there are aspects of public safety at stake, which require the city reserve the ability to review the access locations and restrict their location and design as appropriate, provided such restrictions do not prevent the desired use (retail and vehicle fuel sales) from being established.

As for the signage limitations, the claimant has failed to substantiate the claim with a market analysis, however, staff finds that it is likely that under current signage requirements for the R-25 zone, the desired use (retail and vehicle fuel sales) will not be feasibly permitted to operate. Therefore, to avoid the need to return to this matter with a separate Measure 37 claim, staff recommends that signage be allowed on the condition that it is accompanied by a detailed development plan proposal (for Site Development Review), adheres to the requirements of other C-G or C-C zones, and is found to not affect public safety or constitute a nuisance.

An ordinance adopting the staff report and applicant's statement as findings and establishing a waiver of the R-25 zoning to allow C-G zoning subject to standard site development review is attached as Attachment 2.

August 23, 2005
DATE

APPROVED BY: Dick Bewersdorff
Planning Manager

ATTACHMENT 3

CITY OF TIGARD

PROCEDURE FOR BALLOT MEASURE 37 COMPENSATION CLAIM

13125 SW Hall Blvd., Tigard, OR 97223 503-639-4171 FAX: 503-684-7297

The claim must be in writing and include the information listed below. The claim shall not be considered filed until all of the requirements of the procedure are met.

FOR STAFF USE ONLY Kept 2005-2673

Case No.: M37 2005-00003 Application Accepted By: KJP

Date: 6/10/05 Date Determined Complete:

Deposit: $1,000 (Deposit to be refunded if claim is determined to be valid. If claim is denied and ultimately determined invalid, the claimant shall reimburse the City for the costs the City incurs in processing the claim. If reimbursement exceeds the deposit, the claimant shall pay any additional amount within 30 days of a demand by the City for full payment. If costs are less than the deposit, the difference will be refunded to the claimant.)

IDENTIFICATION OF AFFECTED PROPERTY

Property Street Address/Location(s): SW Scholls Ferry Rd
See ATTACHED TITLE REPORT AND MAP

Tax Map & Tax Lot #(s): 1 S 1 33 AC 14500

Subdivision Lot #(s): LOT 63, HAWKS BEARD TOWN HOMES

CLAIMANT INFORMATION

Property Owners/Claimants/Deed Holders*: BURTON GRABHORN

Address: 14577 SE ANDERSON Rd Phone: 503-658-7075

City/State: Clackamas, ORE Zip: 97011

(Attach list if more than one)

Date Claimant Acquired Property: SEPT 22, 1952

Date Family Member of Claimant Acquired Property (if applicable):

Names and Relationships of Family Members that are Previous Owners (if applicable):

(Attach list if additional space is needed)

Lien/Security Interest Holders of the affected property: NONE

Address: Phone:

City/State: Zip:

(Attach list if more than one)

* **When the owner and the applicant are different people, all owners of the affected property must sign this application in the space provided on the back of this form.** If the affected property is owned by two or more persons and not all owners seek compensation, all owners who do not seek compensation shall sign a waiver of the right to compensation.

REGULATION RESTRICTING USE

Identify the regulation that is alleged to restrict use of affected property. Provide a statement describing how the restriction affects the value of the property. **(Attach additional materials as necessary)**

(1) RESIDENTIAL R-25 ZONING
(2) COMPREHENSIVE PLAN DESIGNATION AS RESIDENTIAL.
(3) WAIVER OF ACCESS RESTRICTIONS, ON ALL ABUTTING STREETS. (4) ANY OTHER ZONING AND BUILDING CODE RESTRICTIONS OR OVERLAY ZONES THAT PRECLUDE A COMMERCIAL USE. (5) SIGN CODE RESTRICTIONS.

CLAIM PREFERENCE

Provide a statement of whether claimant prefers compensation or a waiver, suspension, or modification of the regulation.

WAIVER
AND OR RECEIVE A COMMERCIAL ZONING
SUCH AS C-G OR C-G WITH Vehicle FUEL SALES PERMITTED

Include a statement describing the extent to which the regulation would need to be waived, suspended, or modified to avoid the need for compensation. A description of the proposed use must be provided. **(Attach additional materials as necessary)**

COMMERCIAL SHOPPING CENTER, VARIOUS
TENANTS/USES. ALL RETAIL SALES.

AMOUNT OF COMPENSATION

The amount claimed as compensation: $4,562,360.=

Provide documentation supporting the amount. Said documentation shall include a market analysis, appraisal, or other documentation at least equivalent to a market analysis.

Claimants' Authorized Representative(s) if applicable.

Roger (Mike) VAN
6860 SW Boeckman Rd
Wilsonville OR 97070

PH 503-685-9283
Cell 503-807-7555
FAX 503-682-1747.

SIGNATURES of each owner of the subject property.

DATED this 8th day of June 9th, 2005

Owner's Signature

Owner's Signature

Owner's Signature

Owner's Signature

VIA FAX

Mike Van Investment Real Estate

RECEIVED 8/5/05

AUG 5 2005

CITY OF TIGARD
BUILDING DIVISION

MORGAN TRACY
CITY OF TIGARD

RE: BALLOT MEASURE 37 CLAIM
BY BURTON GRABHORN.

The TITLE REPORT YOU REQUESTED
IS ATTACHED. (DATED AUG 5, 2005)

MIKE VAN.

6860 SW Boeckman Rd., Wilsonville, 97070 • Phone (503) 685-9283 • Fax (503) 682-1747 • CCB# 147989
E-mail Address: MVINVESTMENT@AOL.COM • Cell: (503) 807-7555

First American

First American Title Insurance Company of Oregon
222 SW Columbia Street, Suite 400
Portland, OR 97201
Phn - (503) 222-3651
Fax - (503) 790-7858.

Michelle Johnson, Title Officer
Toll Free: (800) 929-3651
Direct: (503) 790-1822
Email: mjohnson@firstam.com

Order No.: 7019-517632
August 05, 2005

Mike Van Investment Real Estate
6860 SW Boeckman Rd
Wilsonville, OR 97070

Attn:
Phone No.: (503) 685-9283 - Fax No.: (503) 682-1747
Email:

Re:

Preliminary Title Report

ALTA Owners Standard Coverage	Liability $	Premium $	
ALTA Owners Extended Coverage	Liability $	Premium $	
ALTA Lenders Standard Coverage	Liability $	Premium $	
ALTA Lenders Extended Coverage	Liability $	Premium $	
Endorsement 100, 116 & 8.1		Premium $	50.00
Govt Service Charge		Cost $	50.00
Other		Cost $	

We are prepared to issue Title Insurance Policy or Policies in the form and amount shown above, insuring title to the following described land:

Lot 63, HAWK'S BEARD TOWNHOMES, in the City of Tigard, County of Washington and State of Oregon

and as of July 27, 2005 at 8:00 a.m., title vested in:

Burton E. Grabhorn

Subject to the exceptions, exclusions, and stipulations which are ordinarily part of such Policy form and the following:

1. Taxes for the fiscal year 2005-2006 a lien due, but not yet payable.

2. City liens, if any, of the City of Tigard.

This report is for the exclusive use of the parties herein shown and is preliminary to the issuance of a title insurance policy and shall become void unless a policy is issued, and the full premium paid.

3. The assessment roll and the tax roll disclose that the within described premises were specially zoned or classified for Farm use. If the land has become or becomes disqualified for such use under the statute, an additional tax or penalty may be imposed.

4. Statutory powers and assessments of Clean Water Services.

5. Easement, including terms and provisions contained therein:

Recording Information:	May 5, 1989 as Fee No. 89020392
In Favor of:	The Public
For:	Slope
Affects:	The Westerly 5 feet

6. Limited access provisions in favor of the State of Oregon, by and through its State Highway Commission as contained in Decree of Condemnation entered March 3, 1992 in Suit No. C90-114CV in the Circuit Court/Superior Court from Washington County, which provides that no right of easement or right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property.

7. Easement, including terms and provisions contained therein:

Recording Information:	March 3, 1992 as Fee No. 92018168
For:	Slope,water, gas, electric...etal

8. Restrictions shown on the recorded partition plat 2000-007 .

9. Easement on the recorded plat/partition as follows: " A public utility easement and a private drainage easement in favor of Autumn Park Townhomes Owners Association shall exist along all lot frontages as noted on the plat."

10. Easement on the recorded plat/partition as follows: "All lots fronting a public stret are subject to a landscape easement, coincident with the public utility easement, as shown in favor of the City of Tigard."

11. Restrictions shown on the recorded plat/partition of Hawk's Beard Townhomes.

- END OF EXCEPTIONS -

NOTE: Taxes for the year 2004-2005 PAID IN FULL

Tax Amount:	$64,036.22
Map No.:	1S133AC14500
Property ID:	R2121557
Tax Code No.:	051.58

NOTE: According to the public record, the following deed(s) affecting the property herein described have been recorded within 12 months of the effective date of this report: NONE

NOTE: Washington County Ordinance No. 267, filed August 5, 1982 in Washington County, Oregon, imposes a tax of $1.00 per $1,000.00 or fraction thereof on the transfer of real property located within Washington County.

Preliminary Report

Certain conveyances may be exempt from said ordinance, in which case, Washington County will require a correct and timely filing of an Affidavit of Exemption. For all deeds/conveyance documents which are recorded (including situations to meet lender requirements) either the transfer tax must be paid or affidavit acceptable to the County must be filed.

Situs Address as disclosed on Washington County Tax Roll:

Not assigned, Tigard, OR

THANK YOU FOR CHOOSING FIRST AMERICAN TITLE!
WE KNOW YOU HAVE A CHOICE!

RECORDING INFORMATION

Filing Address: **Washington County**
155 North 1st Avenue
Hillsboro, OR 97124-3087

Recording Fees:
$ **5.00** per page
$ **6.00** per document (Public Land Corner Preservation Fund)
$ **11.00** per document (OLIS assessment & Taxation Fee)
$ **5.00** for each additional document title
$ **20.00** non-standard fee

First American Title Insurance Company of Oregon

SCHEDULE OF EXCLUSIONS FROM COVERAGE

ALTA LOAN POLICY (10/17/92)

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy;
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
   (a) created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or materials or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at date of policy); or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
   (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
   (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
   (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
      (a) to timely record the instrument of transfer; or
      (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

ALTA OWNER'S POLICY (10/17/92)

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
   (a) created, suffered, assumed or agreed to by the insured claimant;
   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
   (c) resulting in no loss or damage to the insured claimant;
   (d) attaching or created subsequent to Date of Policy; or
   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
   (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
   (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
      (a) to timely record the instrument of transfer; or
      (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

SCHEDULE OF STANDARD EXCEPTIONS

The ALTA standard policy form will contain in Schedule B the following standard exceptions to coverage:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceedings by a public agency which may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records; unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose.

NOTE: A SPECIMEN COPY OF THE POLICY FORM (OR FORMS) WILL BE FURNISHED UPON REQUEST

T7 (A9 Rev. 5-99)

First American

First American Title Insurance Company of Oregon
1700 SW Fourth Ave, Ste 102
Portland, OR 97201
Phn - (503) 222-3651
Fax - (503) 790-7858

MULTNOMAH COUNTY TITLE UNIT
FAX (503) 790-7858

Title Officer: **Michelle Johnson**
(503) 222-3651

MEASURE 37 LOT BOOK SERVICE

Mike Van Investment Real Estate
6860 SW Boeckman Rd
Wilsonville, OR 97070

Order No.: 7019-517632
February 15, 2005

Attn:
Phone No.: (503) 685-9283 - Fax No.: (503) 682-1747
Email:

Re:

Fee: $500.00

We have searched our Tract Indices as to the following described property:

Lot 63, HAWK'S BEARD TOWNHOMES, in the City of Tigard, County of Washington and State of Oregon

and as of February 9, 2005 at 8:00 a.m.

We find that the last deed of record runs to

Burton E. Grabhorn

We also find the following apparent encumbrances within ten (10) years prior to the effective date hereof:

1. The assessment roll and the tax roll disclose that the within described premises were specially zoned or classified for Farm use. If the land has become or becomes disqualified for such use under the statute, an additional tax or penalty may be imposed.

2. Statutory powers and assessments of Clean Water Services.

3. Easement, including terms and provisions contained therein:

Recording Information:	May 5, 1989 as Fee No. 89020392
In Favor of:	The Public
For:	Slope
Affects:	The Westerly 5 feet

4. Limited access provisions in favor of the State of Oregon, by and through its State Highway Commission as contained in Decree of Condemnation entered March 3, 1992 in Suit No. C90-114CV in the Circuit Court/Superior Court from Washington County, which provides that no right of easement or right of access to, from or across the State Highway other than expressly therein provided for shall attach to the abutting property.

5. Easement, including terms and provisions contained therein:
   Recording Information: March 3, 1992 as Fee No. 92018168
   For: Slope,water, gas, electric...etal

6. Restrictions shown on the recorded partition plat 2000-007 .

7. Easement on the recorded plat/partition as follows: " A public utility easement and a private drainage easement in favor of Autumn Park Townhomes Owners Association shall exist along all lot frontages as noted on the plat."

8. Easement on the recorded plat/partition as follows: "All lots fronting a public stret are subject to a landscape easement, coincident with the public utility easement, as shown in favor of the City of Tigard."

9. Restrictions shown on the recorded plat/partition of Hawk's Beard Townhomes.

We have also searched our General Index for Judgments and State and Federal Liens against the Grantee(s) named above and find:

NONE

We also find the following taxes and city liens:

1. City liens, if any, of the City of Tigard.

NOTE: Taxes for the year 2004-2005 PAID IN FULL

Tax Amount:	$64,036.22
Map No.:	1S133AC14500
Property ID:	R2121557
Tax Code No.:	051.58

In our search for recorded deeds to determine the vestee herein we find the following:

Document	Recorded	Book	Page	Fee No.
Warranty Deed	January 6, 1951	316	11	
Warranty Deed	October 6, 1986			86 045562

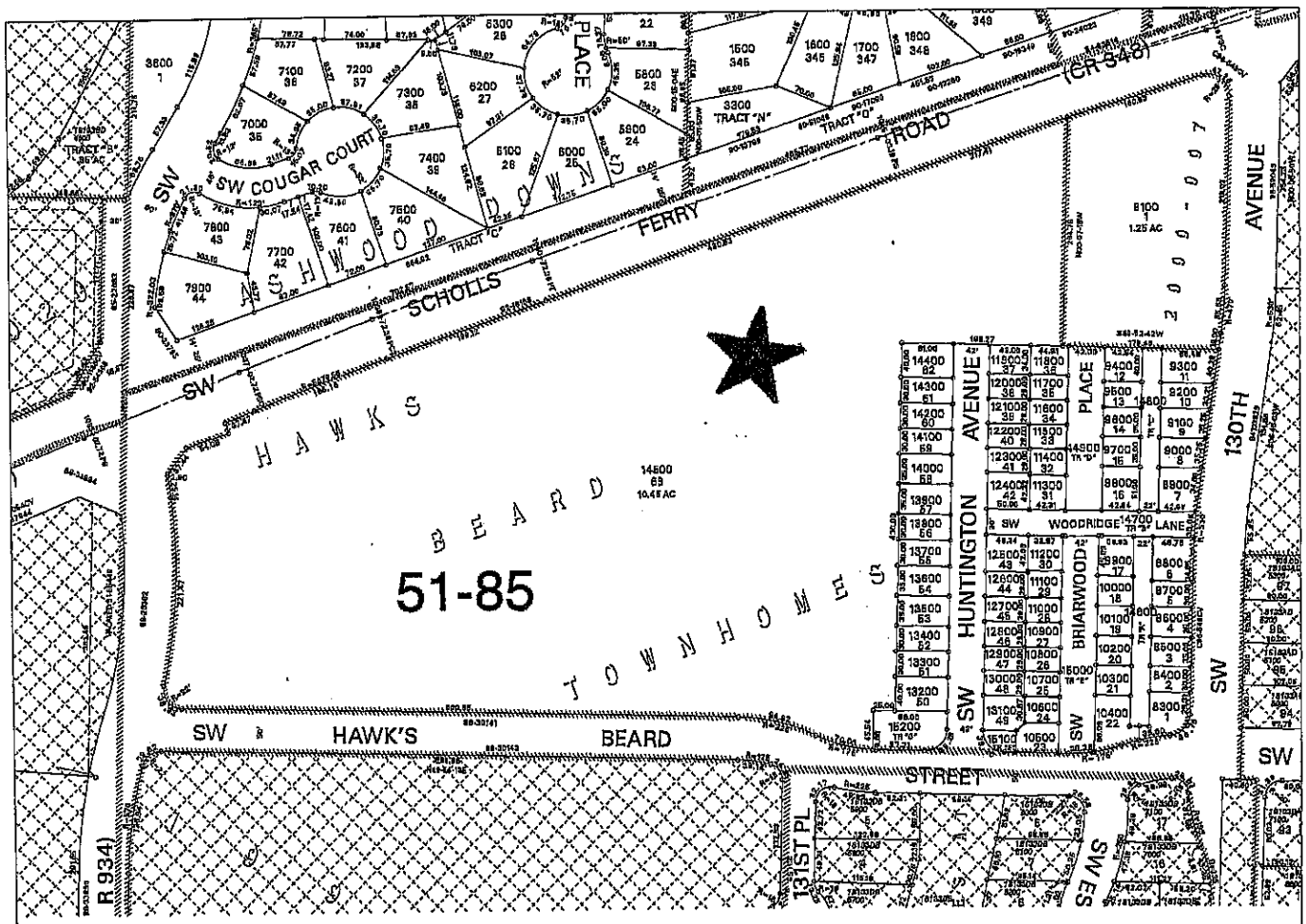
EXECUTED SEPT 22, 1952
Recorded 1986

THIS IS NOT a title report since no examination has been made of the title to the above described property. Our search for apparent encumbrances was limited to our Tract Indices, and therefore above listing do to include additional matters which might have been disclosed by an examination of the record title. We assume no liability in connection wit this Measure 37 Lot Book Service and will not be responsible for errors or omissions therein. The charge for this service will not include supplemental reports, rechecks or other services.

First American Title Insurance Company of Oregon
An assumed business name of TITLE INSURANCE COMPANY OF OREGON
1700 SW Fourth Avenue Portland, OR 97201-5512
Phone: (503) 222-3651

This map is provided as a convenience in locating property
First American Title Insurance Company assumes no liability for any variations as may be disclosed by an actual survey

Reference Parcel Number 1S133AC 14500



FORM No. 1—WARRANTY DEED

86045562

KNOW ALL MEN BY THESE PRESENTS, That We, Lucinda Grabhorn and Fred E. Grabhorn, wife and husband

in consideration of Ten and no/100 Dollars, (no revenue stamps required) consideration less than $100.

to us paid by Burton E. Grabhorn

do hereby grant, bargain, sell and convey unto said Burton E. Grabhorn

his heirs and assigns, all the following real property, with the tenements, hereditaments and appurtenances, situated in the County of Washington and State of Oregon, bounded and described as follows, to-wit:

PARCEL 1: Lot 30, HILLARD AND VAN SCHUYVER TRACT, in the County of Washington and State of Oregon.

PARCEL 11: A part of the West one half of the East one half of Section 33 Township 1 South, Range 1 West of the W.M., Washington County, Oregon, more particularly described as follows;

Beginning 11.66 chains South of the quarter section corner on the North line of said section and on the North and South center line of said section at a point at the most Westerly Southwest corner of a tract conveyed to C.H. VanKleek and ux, by deed recorded in book 49, page 405, June 30,1905 dated January 10,1903; thence South along said North and South center section line 20.27 chains to the center of said section; thence continuing South along said center section line 15 chains, thence East on a line parallel with the East and West center line of said Section and North of Lot 4, Ash Valley Tract, 12 chains to a point on the West line of a tract conveyed to John R. Scoles, et ux, by deed recorded in book 291, page 558, December 20,1944; thence North parallel with the said North and South center line along the West line of said Scoles tract 15 chains; thence East along the said East and West center section line and along the North line of said Scoles tract 8 chains to the East line of the West one half of the East one half of said section; thence North parallel with said North and South section center line and along the West line of a tract conveyed to Vincent Olsen by deed recorded in book 225, page 248, December 17,1943, 13.38 chains to the center of Scholls Ferry Road; thence South 70° West along the center of said road 10.68 chains to a point on the most Easterly West line of said Van Kleek tract; thence North 18.50 chains along the said Van Kleek boundary line to a point on the most Northerly South line of said Van Kleek tract; thence West along said Van Kleek South line 10 chains to the point of beginning, in Washington County, Oregon.

To Have and to Hold the above described and granted premises unto the said Burton E. Grabhorn

his heirs and assigns forever.

And we are the grantors above named do covenant to and with the above named grantee his heirs and assigns that we are lawfully seized in fee simple of the above granted premises, that the above granted premises are free from all encumbrances,

and that we will and our heirs, executors and administrators, shall warrant and forever defend the above granted premises, and every part and parcel thereof, against the lawful claims and demands of all persons whomsoever,

Witness our hands and seals this 22 day of September 19 52

Executed in the Presence of

Edna M. Blumenkar — Lucinda Grabhorn (SEAL)

Joy Gray — Fred E. Grabhorn (SEAL)

(SEAL)

(SEAL)

RECORDED 1986

1-2

OCT 6 1986

STATE OF OREGON,
County of Washington } ss.

BE IT REMEMBERED, That on this 22 day of September 1952 before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named Fred B. Grabhorn and Lucinda Grabhorn, husband and wife known to me to be the identical individual s described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Doy Gray
Notary Public for Oregon.
My Commission expires Oct 1 1955

WARRANTY DEED
(FORM No. 2)

Lucinda Grabhorn et al

TO

Burton E. Grabhorn

STATE OF OREGON,
County of } ss.

I certify that the within instrument was received for record on the day of 19 at o'clock M. and recorded in book on page Record of Deeds of said County.

Witness my hand and seal of County affixed.

County Clerk—Recorder.

By Deputy.

AFTER RECORDING RETURN TO
Burton E. Grabhorn
11493 SE 82nd
Portland, Or. 97266

STATE OF OREGON
County of Washington } ss.

I, Donald W. Mason, Director of Assessment and Taxation and Ex-Officio Recorder of Conveyances for said county, do hereby certify that the within instrument of writing was received and recorded in book of records of said county.

Donald W. Mason, Director of Assessment and Taxation, Ex-Officio County Clerk

1986 OCT -6 PM 2:05

2

Mike Van Investment Real Estate

6/10/2005

Burton Grabhorn
14577 S.E. Anderson Road
Clackamas, Oregon 97011

RE: Your 10.5 acres in Tigard, Oregon

Dear Mr. Grabhorn,

At your request, I have prepared a market analysis of your property referenced above.

As you are aware, I am not a Real Estate Appraiser and this analysis should not be construed or interpreted as an appraisal.

I am a licensed Real Estate Broker in Oregon and I do specialize in listing and selling development land among other investment types of real estate.

My market analysis is based on the following assumptions:

1. You are successful in achieving a ballot measure 37 claim with a result of a waiver of all zoning restrictions imposed on the property or adopted by governing agencies since the date you purchased the property. (September 22, 1952)

2. That you are successful in obtaining permits as needed, if any, to develop the property into a commercial retail shopping center.

3. The property would be placed on the market for a reasonable time period, advertised and exposed to buyers through direct mailings and internet website postings.

Sincerely,

Mike

Mike Van
Mike Van Investment Real Estate
6860 SW Boeckman Road
Wilsonville, Oregon 97070
Office: 503-685-9283
Fax: 503-682-1747
Cell: 503-807-7555
Email: MVINVESMENT@aol.com

Mike Van Investment Real Estate

Burton Grabhorn Property
Comparative Market Analysis
Lot 63, Hawks Beard Town homes
City of Tigard, Washington County, Oregon

Property Description: 10.5 + - acres that is bordered on the North buy S.W. Scholls Ferry Road, on the West by S.W. 135th Street, on the South by Hawks Beard Town Homes plat, lots 1 through 62.

The property is currently zoned R-25, medium density residential. Access is available to the site from S.W. 135th Avenue on the West, Hawks Beard Street on the South, S.W. Huntington Avenue neat the Northeast corner of the property.

Additional access should be available from S.W. Scholls Ferry Road for a right in, right out access for east bound traffic.
A previous lawsuit/condemnation issue with the Oregon Department of Transportation was resolved with a provision that ODOT would not object to such access if it was approved by the City of Tigard.

Topography: Gently sloping form North to South.

Flood Plain & Wetlands: The land is not impacted by or within a flood plain, nor are any wetlands present.

Current Value: In April of 2003, Grabhorn sold just less than 4 acres that was a portion of this site for a price of $337,000.00 per acre. Since that date, he has received an offer to purchase from the same buyers, a 4 acre portion of the property at a price of $400,000.00 per acre.

A liberal value on the high end of the price scale would be a value of $500,000.00 per acre or $5,500,000.00.

Proposed Use: The owner's proposing a neighbor hood shopping center.

Domestic Water: City of Tigard water is available to the site.

6860 SW Boeckman Rd., Wilsonville, 97070 • Phone (503) 685-9283• Fax (503) 682-1747• CCB# 147989
E-mail Address: MVINVESTMENT@AOL.COM • Cell: (503) 807-7555

Mike Van Investment Real Estate

Sewage Disposal System:	City of Tigard sanitary sewer is available in Hawks Beard Street.
Electricity:	Portland General Electric.
Storm Water:	City of Tigard storm sewer lines are available near Hawks Beard Street.
Restrictive Land Use Statutes:	City of Tigard R-25 residential zoning sign code, access restrictions if any, and overlay zones or tree cutting ordinances if any apply.
Value if Proposed Use is Allowed:	See the attached market analysis prepared by Mike Van, Broker, Mike Van Investment Real Estate.
Claim for Damages:	$4,562,360.00
Owner Preference:	Waiver of all land use ordinances adopted by the State of Oregon, Washington County, the City of Tigard since the date the owner obtained title that prevent construction of the shopping center.

6860 SW Boeckman Rd., Wilsonville, 97070 • Phone (503) 685-9283• Fax (503) 682-1747• CCB# 147989
E-mail Address: MVINVESTMENT@AOL.COM • Cell: (503) 807-7555

Burt Grabhorn Property
SW 135th Ave. at SW Scholls Ferry Rd. Tigard, Oreogn
Comparable Sales/Market Analysis

Property #	Description	Acreage Size	Sales Price	Price per Sq. Ft.	Date of Sale
1	Westside of 72nd, North of Dartmouth,	3.15 Acres	$2,436,358.00	$17.76	4/16/2000
	Neighborhood/Community center site				
	Tigard, Oregon				
	Reimbold Properties, Buyer				
2	8585 SW Cascade Ave.	6.71 Acres	$5,400,000.00	$18.47	9/29/2004
	Beaverton, Oregon strip center site				
	NSHE Cascade, LLC, Buyer				
3	Northside of SW Beaverton-Hillsdale	1.58 Acres	$2,100,000.00	$30.51	Oct. 2004
	Highway just West of Sw Griffith Drive,				
	Beaverton, Oregon (Bank Pad.)				
	Buyer was Wellsfargo Bank				
4	3585 SW Hall blvd.	2.14 Acres	$2,700,000.00 less	$28.96	Feb. 2004
	Beaverton, Oregon		$50,000.00 demolition		
	Buyer was Hall Street Appliance, LLC		costs, or		
			$2,650,000.00		
5	Subject 10.5 acres as a community or	10.5 Acres	Projected conservatively	$22.00	Not Sold
	neighborhood shopping center		at $22.00 per sq. ft. or		
	(457,380 sq. ft.)		$10,062,360.00		

The projected current value as zoned is $5,500,000.00
The projected value as a shopping center site is $10,062,360.00
The difference in value is $4,562,360.00

W side 72nd/N of Dartmouth *Published*

Tigard, OR 97223 -8655
Neighborhood/Community Center Site of 137,214 SF Sold for **$2,436,358**

buyer

Rembold Properties (LLC)
c/o Wayne C. Rembold
1022 SW Salmon St
Portland, OR 97205
(503) 222-7258

Photo N/Ap, Land Sale

seller

Winco Foods
c/o Gary R. Piva

vital data

Sale Date:	04/06/2000	Sale Price:	$2,436,358
Escrow/Contract:	2 years	Status:	Confirmed
Days on Market:	N/Ap	Down Pmnt:	$1,436,358
Exchange:	Tax Dfrrd	Pct Down:	59%
Conditions:	None	Doc No:	00027608
Zoning:	C-G,Tigard	Trans Tax:	($2,437.00)
Frontage:	599' 72nd (est)	Submarket:	Tigard
		Topography:	Level
		Structures:	None
		Land Improvements:	Finished lot
		Offsites:	All to site
		Lot Dimensions:	Irregular
		Corner:	Yes
Comp No:	WAC-42177-05-0020	Property Type:	Commercial Land

Intended Use: **To construct a shopping center**

income/expense

	Gross Acreage	Net Acreage
Acres:	3.150	N/Av
Price/Acre:	$773,447	N/Av
SF:	137,214	N/Av
Price/SF:	$17.76	N/Av

listing broker

Robert Niehaus Co.
4380 SW Macadam Ave Ste. 210
Portland, OR 97201
(503) 295-3791
Bob Niehaus

buyers broker

Robert Niehaus Co.
4380 SW Macadam Ave Ste. 210
Portland, OR 97201
(503) 295-3791
Bob Niehaus

financing

1st First Security Bank(Const, VIR, due in 1 yrs)
Bal/Pmt: **$4,992,500**
2nd (due in 1 yrs)
Bal/Pmt: **$1,000,000**

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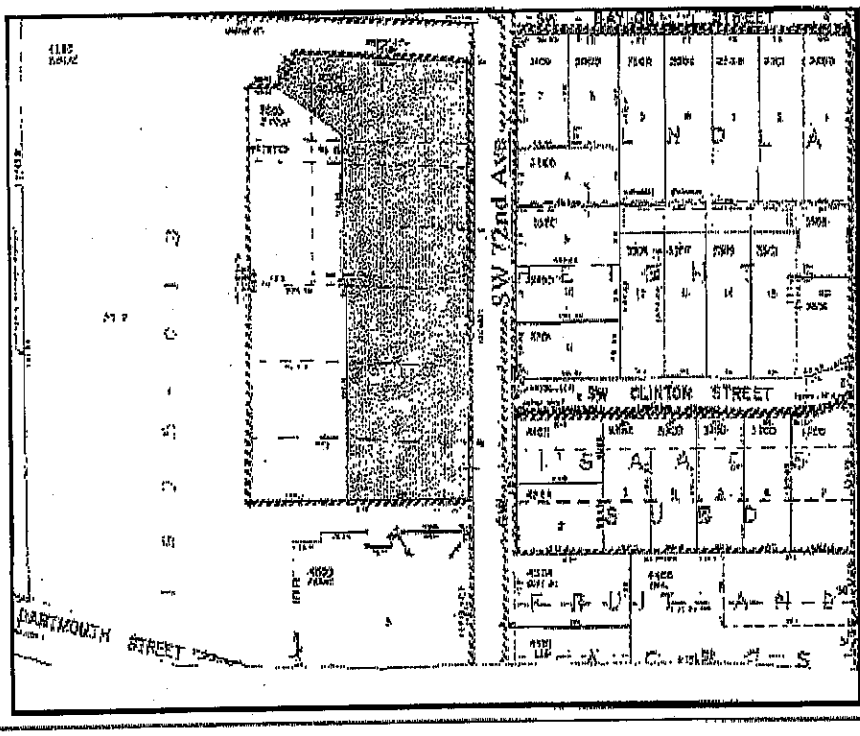
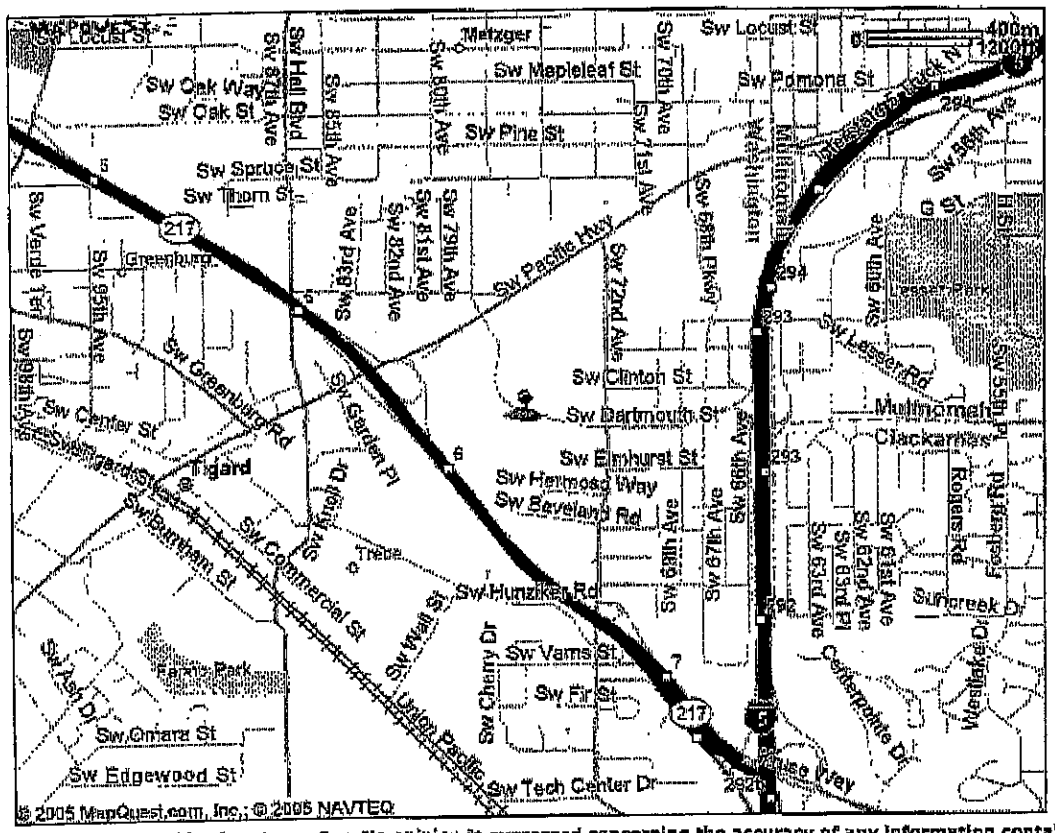
plat map

Map: **6S5-G/3** Legal: **SE4 sec 36 T1S R1W W.M.**

Comps No: **WAC-42177-05-0020** Parcel Number: **R2036293** Title Co: **Chicago Title**



site map



This site map is derived from MapQuest.com Inc. No opinion is expressed concerning the accuracy of any information contained herein.

description

Financing:
1st First Security Bank $4,992,500 Const, VIR, due in 1 yrs
2nd $1,000,000 due in 1 yrs

* Exchange: This was the seller's downleg in a 1031 exchange.

Total Assessed: $679,210
Year Assessed: 1999

Doc Num / Transfer Tax
00027608 ($2,437)

Recording Date: 04/06/2000

Confirmed by: Karla Miranda
Date: 05/16/2000
Email: qualitycontrol@costar.com
Phone: (888)536-8389
Updated Date: 05/19/2000

8585 SW Cascade Ave *Published*
Tyco / Viewmaster Bldg (formerly)
Beaverton, OR 97008 -7178
Strip Center Site (portion) of 292,288 SF Sold for **$5,400,000**

CoStar COMPS

buyer
NSHE Cascade, LLC
c/o Randy Kyte
1121 SW Salmon St
Portland , OR 97205-2000
(503) 242-2900

Photo N/Ap, Land Sale

seller
Hall Street Associates, LLC
c/o Josef Diamond
3301 Monte Villa Pkwy
Bothell , WA 98021-8972
(425) 489-9899

vital data

Sale Date:	**09/29/2004**	Sale Price:	**$5,400,000**
Escrow/Contract:	**270 days**	Status:	**Confirmed**
Days on Market:	**240 days**	Down Pmnt:	**$5,400,000**
Exchange:	**No**	Pct Down:	**100%**
Conditions:	**Expansion**	Doc No:.	**04113044**
Zoning:	**GC, Beaverton**	Trans Tax:	**($5,400.00)**
Frontage:	**400' SW Cascade Ave**	Submarket:	**217 Corridor/Beaverton**
		Topography:	**Sloping**
		Structures:	**193,000 SF Ind Bld (Teardown)**
		Land Improvements:	**Fully Improved Lot**
		Offsites:	**All to site**
		Lot Dimensions:	**Irregular**
		Corner:	**No**
Comp No:	**WAC-47637-10-0420**	Property Type:	**Commercial Land**

Intended Use: **To expand the adjacent Cascade Plaza Shopping Center.**

income/expense

	Gross Acreage	Net Acreage
Acres:	**6.710**	**N/Av**
Price/Acre:	**$804,769**	**N/Av**
SF:	**292,288**	**N/Av**
Price/SF:	**$18.47**	**N/Av**

listing broker
GVA Kidder Mathews
1 Sw Columbia St
Portland , OR 97258 -2002
(503) 221-9900
Mark D Fraser, SIOR

buyers broker
None involved per principal

financing
Not Applicable - all cash sale

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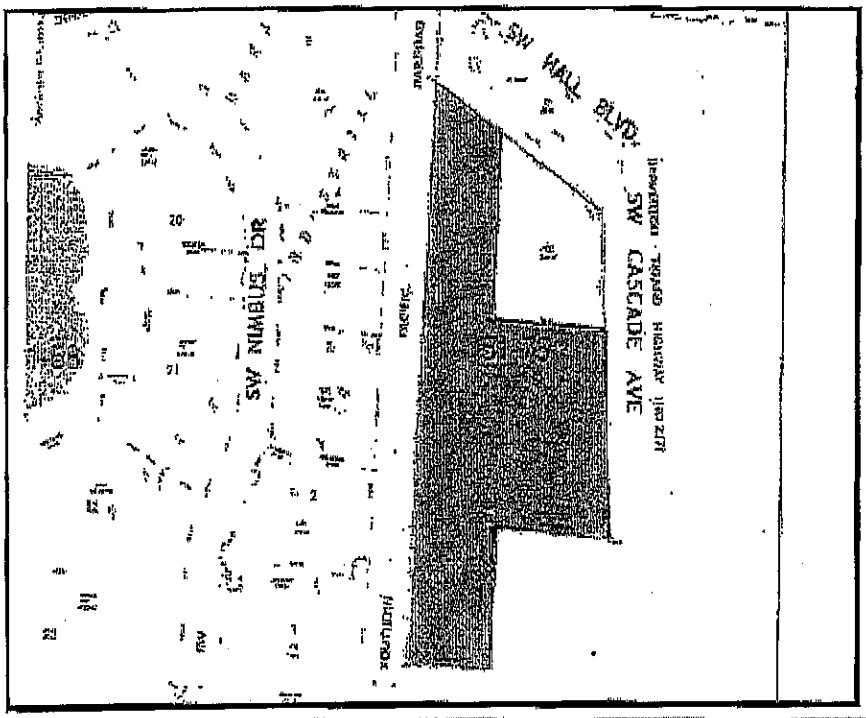
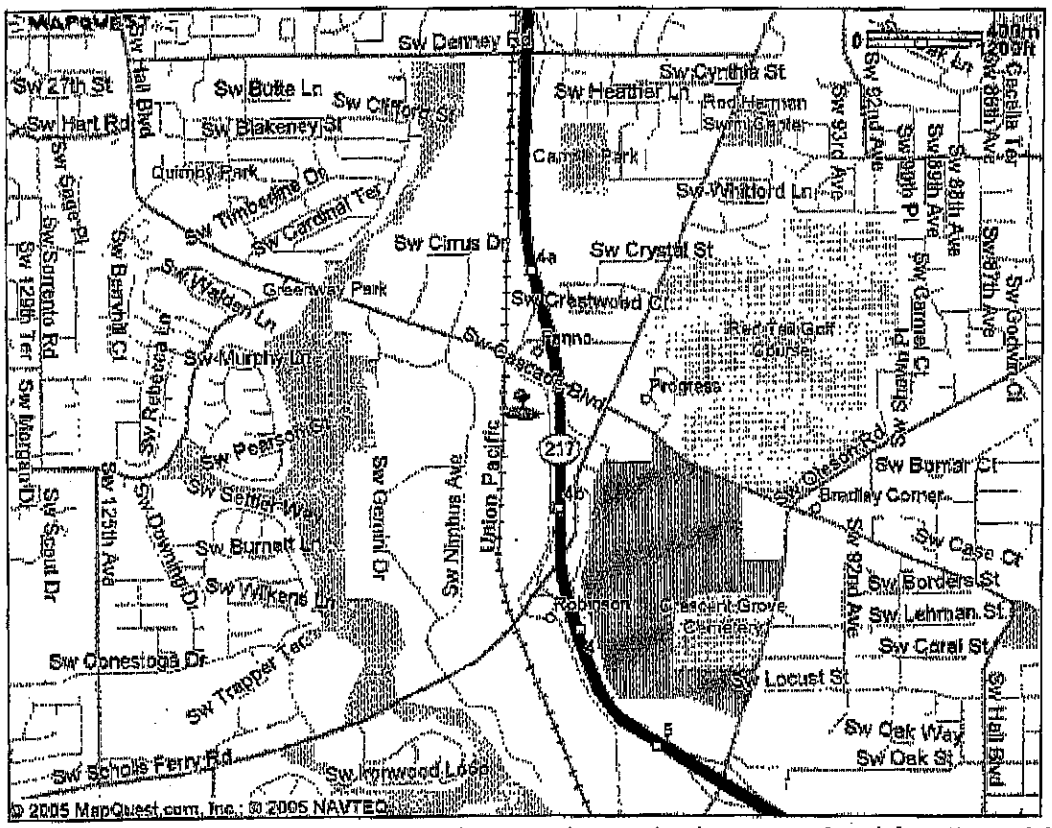
plat map

Map: **625-D/7** Legal: **Por NW4 sec 27 T1S R1W WM together with easement for vehicular and pedestrian egress/ingress & utility install**

Comps No: **WAC-47637-10-0420** Parcel Number: **R0240028 1S127AD-00100** Title Co: **Ticor Title**



site map



This site map is derived from MapQuest.com Inc. No opinion is expressed concerning the accuracy of any information contained herein.

description

* additional contacts
Additional Listing Broker
Katy Durant
(503) 644-9400

Listing broker reported that prior to sale there was ground water contamination issues on subject property. Broker reported seller and all surrounding properties had to fund a 30 year cleanup project in that area. Seller paid for costs of remediation prior to sale but the cleanup was still ongoing at time of sale. Listing broker reported these contamination issues lowered the value of the land. Property fronts railroad tracks to the west.

* Sale Price: Buyer reported sale price was entirely for land value only and that there was no specific allocation of the price paid for the existing building.

* Topography: Listing broker reported property slopes to the west.

* Structures: At time of sale there was a 193,000 SF Industrial building. Building was a former Tyco/Viewmaster facility but had been vacant prior to sale. Broker reported buyer will be paying $550,000 in demolition costs for the building. Please refer to CoStar serial # GJ1099 for additional building information.

* Listing Broker: Additional Listing broker was Katy Durant with Trammell Crow, (503) 644-9400.

* APN: Map & Tax Lot #1S127AD0-0100

Doc Num / Transfer Tax
04113044 ($5,400)

Recording Date: 09/29/2004

Q-S-T-R: AD-27-01-01
Confirmed by: Josh Lehman

NEW

APR 5 2005

Land Sale No.

Code:	OCLS-1729 (LM)	**Map No.:**	625
Location:	North side of S.W. Beaverton-Hillsdale Highway just west of S.W. Griffith Drive		
City:	Beaverton	**County:**	Washington
Legal Description:	Tax Lot 1200, Map 1S1W15AB		
Grantor:	Anita M. McGill		
Grantee:	Wells Fargo Bank		
Date of Sale:	October, 2004	**Recording:**	04122739
Sale Price:	$2,100,000		
Terms:	Cash		
Cash Equiv. Price:	$2,100,000		

Site Size: 1.58 acres or 68,825 sq.ft.
Price/Sq.Ft.: $30.51
Zoning: RC-E (Regional Center East)
Access: This is a pad site within the Beaverton Town Square shopping center which has direct access from S.W. Beaverton-Hillsdale Highway
Shape: Basically rectangular
Topography: Level
Utilities: All available
Confirmed By: George Macoubray, listing broker at HSM Pacific Realty, Inc. (503-245-1400)

Exposure Time: Property was not available for sale. Plans were to develop this site with a 20,000 sq.ft. retail center and during the process of pre-leasing the proposed center, Wells Fargo Bank approached the owner about purchasing the property.

Comments: This is a pad site within the Beaverton Town Square shopping center. The site is asphalt paved and had been used for parking. Wells Fargo Bank purchased the site to build a bank branch.

This property previously sold in June, 2001 for $1,300,000 or $18.89 per sq.ft. Although the sale closed in June, 2001, the price was reportedly agreed to in January, 1998. This sale/resale reflects an appreciation of 61.5%.

NEW

APR . 5 2005

Land Sale No.

Code:	OCLS-1731 (LM)	**Map No.:**	625
Location:	3585 S.W. Hall Blvd.		
City:	Beaverton	**County:**	Washington
Legal Description:	Tax Lot 1500, Map 1S109DD		
Grantor:	HJW Properties, LLC		
Grantee:	Hall Street Appliance, LLC		
Date of Sale:	February, 2004	**Recording:**	04016653
Sale Price:	$2,650,000		
Terms:	Cash		
Cash Equiv. Price:	$2,700,000 ($2,650,000 + demolition cost of $50,000)		
Site Size:	2.14 acres or 93,218 sq.ft.		
Price/Sq.Ft.:	$28.96		
Zoning:	CS		
Access:	S.W. Hall Blvd.		
Shape:	Slightly irregular but primarily rectangular		
Topography:	Generally level		
Utilities:	All available		
Confirmed By:	George Lampus, Real Estate Investment Group (503-222-1655)		
Exposure Time:	Several years		

Comments: This is the former Copeland Lumber yard site located along the north side of Hall Blvd., a short distance east of Cedar Hills Blvd. At the time of sale, the site was improved with a 16,927 sq.ft. building that was a retail unit for Copeland Lumber with a showroom, warehouse area and office space. The improvements were constructed in 1964 and were expanded in 1981. The sites zoning is CS, Community Commercial, which allows a wide range of commercial uses. It was purchased by an entity of Standard TV & Appliance who intended to tear down the existing building and replace it with a new retail/warehouse building. A sale price of $2,700,000 had been negotiated and was reduced by $50,000 for the estimated costs to demolish the existing improvements.

Planning Division
13125 SW Hall Boulevard
Tigard, OR 97223
(503) 639-4171

CITY OF TIGARD

Fax

To:	Mark Van	**From:**	Cheryl Caines
Fax:	503-682-1747	**Pages:**	3
Phone:		**Date:**	12/20/2004
Re:	Measure 37 Claim Form	**CC:**	
		Phone:	(503) 639-4171 x 2451

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

HAWK'S BEARD TOWNHOMES

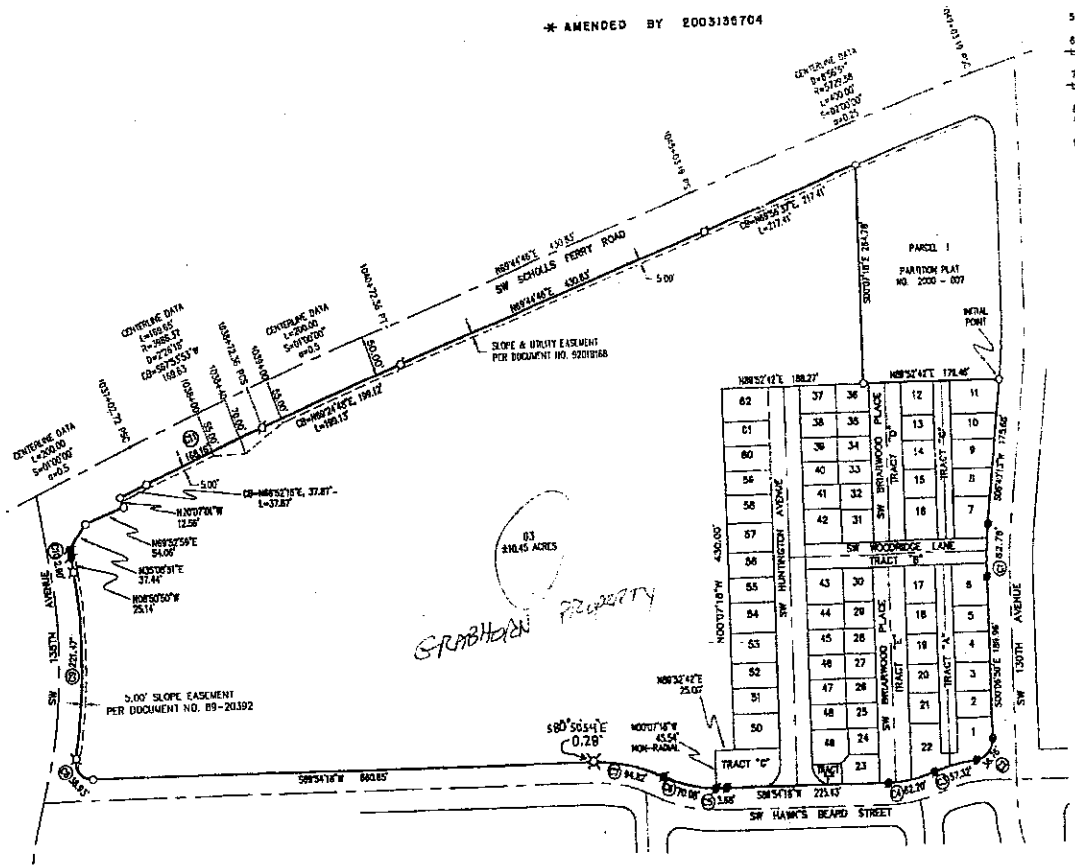
A REPLAT OF PARCEL 2, PARTITION PLAT NO. 2000-007 IN THE NE 1/4 OF SECTION 33, T. 1 S., R. 1 W., WILLAMETTE MERIDIAN CITY OF TIGARD, WASHINGTON COUNTY, OREGON

DATE: APRIL 9, 2003

RECORDED AS DOCUMENT NUMBER 2003105846

* AMENDED BY 2003136704

* AUTUMN PARK TOWNHOMES OWNERS ASSOCIATION



NOTES AND PLAT RESTRICTIONS

1) SUBJECT TO COVENANTS, CONDITIONS AND RESTRICTIONS, APPLICABLE TO ALL LOTS AND TRACTS, AS RECORDED IN DOCUMENT NO. 2003105849, WASHINGTON COUNTY DEED RECORDS.

2) THIS SUBDIVISION IS SUBJECT TO THE CONDITIONS OF APPROVAL PER THE CITY OF TIGARD SUBDIVISION CASE NO. SUB 2002-00005 AND CITY OF TIGARD PLANNED DEVELOPMENT REVIEW CASE NO. PDR 2002-00002.

3) TRACT "A", A PRIVATE ACCESS, SHALL BE OWNED AND MAINTAINED BY THE ~~OWNERS OF LOTS 1-6 AND 17-22.~~ *

4) TRACT "B", "S.W. WOODRIDGE LANE", A PRIVATE STREET, SHALL BE OWNED AND MAINTAINED BY THE ~~OWNERS OF LOTS 1 THROUGH 22.~~ *

5) TRACT "C", A PRIVATE ACCESS, SHALL BE OWNED AND MAINTAINED BY THE ~~OWNERS OF LOTS 7 THROUGH 16.~~ *

6) TRACT "D", "S.W. BRIARWOOD PLACE", A PRIVATE STREET, SHALL BE OWNED AND MAINTAINED BY THE ~~OWNERS OF LOTS 16 THROUGH 19, AND 31 THROUGH 38.~~ *

7) TRACT "E", "S.W. BRIARWOOD PLACE", A PRIVATE STREET, SHALL BE OWNED AND MAINTAINED BY THE ~~OWNERS OF LOTS 17 THROUGH 38.~~ *

8) TRACT "F", AN OPEN SPACE, SHALL BE OWNED AND MAINTAINED BY THE AUTUMN PARK TOWNHOMES OWNERS ASSOCIATION.

9) TRACT "G", A WATER QUALITY FACILITY, SHALL BE OWNED AND MAINTAINED BY THE CITY OF TIGARD.

10) TRACTS "A", "B", "C", "D" AND "E" ARE SUBJECT TO A PUBLIC UTILITY EASEMENT OVER THEIR ENTIRETY.

11) A PUBLIC UTILITY EASEMENT AND A PRIVATE STORM DRAINAGE EASEMENT IN FAVOR OF THE AUTUMN PARK TOWNHOMES OWNERS ASSOCIATION SHALL EXIST ALONG ALL LOT FRONTAGES AS NOTED ON PLAT.

12) THERE SHALL BE NO DIRECT MOTOR VEHICLE ACCESS TO OR FROM LOTS 1 THROUGH 11 ONTO SW 130TH AVENUE UNLESS AUTHORIZED BY THE GOVERNING BODY HAVING JURISDICTION OVER SAID ROAD.

13) TRACTS "A" THROUGH "E" ARE SUBJECT TO A LANDSCAPE EASEMENT OVER THEIR ENTIRETY FOR THE BENEFIT OF THE AUTUMN PARK TOWNHOMES OWNERS ASSOCIATION.

14) ALL LOTS FRONTING A PUBLIC STREET ARE SUBJECT TO A LANDSCAPE EASEMENT, COINCIDENT WITH THE PUBLIC UTILITY EASEMENT, AS SHOWN IN FAVOR OF THE CITY OF TIGARD.

15) TRACTS "A" THROUGH "E" ARE SUBJECT TO A PUBLIC SANITARY SEWER EASEMENT OVER THEIR ENTIRETY.

16) TRACTS "A" THROUGH "E" ARE SUBJECT TO A PRIVATE STORM DRAINAGE EASEMENT OVER THEIR ENTIRETY FOR THE BENEFIT OF ABUTTING LOTS.

17) DIRECT MOTOR VEHICLE ACCESS BETWEEN SW SCHOLLS FERRY ROAD AND PARCEL 2 IS LIMITED BY THE DECREE OF CONDEMNATION PER SUIT NO. C90-114CV, WASHINGTON COUNTY CIRCUIT COURT. RIGHTS OF ACCESS TO AND FROM SW SCHOLLS FERRY ROAD IS LIMITED TO HIGHWAY ENGINEER'S STATION 1042+50 AND 50.00 FEET IN WIDTH FOR RIGHT TURN INGRESS AND EGRESS AND SHALL BE BUILT IN SUCH A MANNER AS TO COMPLETELY DISCOURAGE LEFT TURN MOVEMENTS.

18) A 12.50 FOOT LANDSCAPE EASEMENT IN FAVOR OF THE AUTUMN PARK TOWNHOMES OWNERS ASSOCIATION AND A PUBLIC SIDEWALK EASEMENT SHALL EXIST ALONG THE FRONTAGE OF TRACT B AS SHOWN.

NARRATIVE

THE PURPOSE OF THIS PLAT IS TO SUBDIVIDE A PORTION OF PARCEL 2, PARTITION PLAT NO. 2000-007, WASHINGTON COUNTY PLAT RECORDS.

BASIS OF BEARINGS AND BOUNDARY DETERMINATION PER PARTITION PLAT NO. 2000-007, WASHINGTON COUNTY PLAT RECORDS. THE MONUMENTS ON THE NORTH RIGHT-OF-WAY OF S.W. HAWK'S BEARD STREET AND WEST RIGHT-OF-WAY OF S.W. 130TH AVENUE ALONG WITH THE TWO MONUMENTS AS SHOWN ON THE EAST RIGHT-OF-WAY OF S.W. 135TH AVENUE HAVE BEEN DESTROYED BY CONSTRUCTION. THE ABOVE MENTIONED RIGHT-OF-WAY MONUMENTS AND LINES WERE REESTABLISHED PER SAID PARTITION PLAT RECORD DATA AND HOLDING CENTERLINE MONUMENTATION AS SHOWN ON SAID PARTITION PLAT.

SHEET INDEX

SHEET 1 – NOTES AND PLAT RESTRICTIONS, NARRATIVE, SHEET INDEX, EXTERIOR BOUNDARY, LOT 63 AND CURVE TABLE
SHEET 2 – LOTS 1-6, 17-22, TRACTS "A" & "E", A PORTION OF TRACT "B", LEGEND AND CURVE TABLES
SHEET 3 – LOTS 7-16, TRACT "C", A PORTION OF TRACTS "B" AND "D", LEGEND AND CURVE TABLES
SHEET 4 – LOTS 31-42, 58-62, A PORTION OF TRACTS "B" AND "D", LEGEND
SHEET 5 – LOTS 23-30, 43-49, 50-56, A PORTION OF TRACTS "B" AND "E", TRACT "G", TRACT "F", LEGEND AND CURVE TABLES
SHEET 6 – APPROVALS, SURVEYOR'S CERTIFICATE, SUBDIVISION PLAT CONSENT AFFIDAVIT, DECLARATION, ACKNOWLEDGEMENTS AND REMAINING MONUMENTATION STATEMENT

LEGEND

- O – DENOTES FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "G & L LAND SURVEYING INC." PER PARTITION PLAT NO. 2000-007
- Ø – DENOTES FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "OSHO" PER SN 25,453
- ⌑ – DENOTES FOUND 5/8" IRON ROD WITH ALUMINUM CAP MARKED "WAKER & ASSOCIATES, INC." PER SN 23,214
- ● – DENOTES SET 5/8" X 30" IRON ROD WITH YELLOW PLASTIC CAP MARKED "TETSUKA ASSOC. INC."

BOUNDARY CURVE TABLE

CURVE/LOT	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD DIST.
C1	6°47'03"	530.00'	62.75'	S03°16'42"W	62.72'
C2	84°15'07"	25.00'	36.76'	S42°00'44"W	33.54'
C3	14°35'51"	225.00'	57.32'	S78°50'22"W	57.17'
C4	20°21'51"	175.00'	62.20'	S73°43'22"W	61.87'
C5	112°14'	175.00'	3.68'	N89°29'35"W	3.68'
C6	22°56'35"	175.00'	70.05'	S77°25'11"E	69.61'
C7	24°08'49"	225.00'	94.82'	N28°01'18"W	94.12'
C8	101°23'21"	22.00'	38.93'	N39°24'02"W	34.05'
C9	20°08'29"	630.00'	221.47'	N01°13'24"E	220.33'
C10	5°32'12"	30.00'	2.90'	N06°04'44"W	2.90'
C11	1°41'42"	5679.55'	168.16'	N62°53'52"E	168.15'

North

SCALE: 1"=100'

REGISTERED PROFESSIONAL LAND SURVEYOR
OREGON
JANUARY 30, 1987
TROY T. TETSUKA
2841

RENEWAL DATE 6-30-04

I HEREBY CERTIFY THAT THIS IS A TRUE AND EXACT COPY OF THE PLAT OF "HAWK'S BEARD TOWNHOMES".

SHEET 1 OF 6

JOB NO. SRD1053

TETSUKA ASSOCIATES, INC.
LAND SURVEY CONSULTING
9900 S.W. WILSHIRE STREET, #110
PORTLAND, OR 97225
503.517.0662 FAX: 503.445.1300

M372005-00003

AGENDA ITEM # _____
FOR AGENDA OF September 13, 2005

CITY OF TIGARD, OREGON
COUNCIL AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Appoint Craig Prosser City Manager and Authorize Mayor to Sign Employment Agreement

PREPARED BY: Sandy Zodrow, HR Director DEPT HEAD OK CP CITY MGR OK CP

ISSUE BEFORE THE COUNCIL

Should the City Council appoint Craig Prosser, Interim City Manager, as City Manager, effective September 13, 2005 and authorize the Mayor to sign an employment agreement between the City of Tigard and Mr. Prosser?

STAFF RECOMMENDATION

Appoint Craig Prosser City Manager effective September 13, 2005 and authorize the Mayor to sign an employment agreement between the City of Tigard and Mr. Prosser

INFORMATION SUMMARY

After a nationwide search for a new City Manager, the Tigard City Council has selected Craig Prosser as their sole finalist for appointment to the City Manager vacancy. The Mayor and Council have spent the last few weeks developing and discussing the terms of the employment contract between Mr. Prosser and the City of Tigard. As a result, a proposed employment agreement has been prepared for Council's approval and is attached as Exhibit A.

OTHER ALTERNATIVES CONSIDERED

A nationwide recruitment was conducted and applications were considered by the Council

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

Not applicable

ATTACHMENT LIST

Exhibit A, Employment Agreement between Craig Prosser, City Manager and the City of Tigard

FISCAL NOTES

The City Manager is an authorized position within the City's current budget

City of Tigard

CITY MANAGER EMPLOYMENT AGREEMENT 2005

CITY MANAGER EMPLOYMENT AGREEMENT
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City Manager Employment Agreement

Introduction

This Agreement, made and entered into this September 13, 2005, by and between the City of Tigard, Oregon, a municipal corporation, (hereinafter called "Employer") and Craig Prosser, (hereinafter called "Employee") an individual who has the education, training and experience in local government management, both of whom agree as follows:

Section 1: Term

This agreement shall remain in full force in effect from September 13, 2005, until July 31, 2009, or until terminated by the Employer or the Employee as provided in this agreement. If not previously terminated as provided in this agreement, the term of this agreement, and the period of Employee's employment shall be automatically extended from year to year for additional periods of one year each following expiration of the initial four-year term unless either party gives written notice to the other not less than ninety (90) days before the expiration of the initial or any extended term, that this agreement shall be terminated or renegotiated. The giving of such notice terminates the agreement at the end of the initial term or extended term in which such notice is given.

Section 2: Duties and Authority

Employer agrees to employ Craig Prosser as City Manager to perform the functions and duties specified in the Charter and Municipal Code of the City of Tigard and to perform other legally permissible and proper duties and functions assigned by City Council. These duties and functions include, but are not limited to:

A. Guiding, managing and directing the day-to-day administrative operations, consistent with the goals and priorities established by the Mayor and City Council;

B. Providing strategic research, recommendations and management leadership to the Mayor and City Council on budgets, programs, policies and services;

C. Appointing, supervising, disciplining and removing appointive personnel, except appointees of the Mayor or City Council;

D. Acting as chief budget and fiscal officer of the City and submitting the annual budget and capital program to the Mayor and City Council;

E. Supervising the administration of and assuming responsibility for the enforcement of all laws and ordinances executed within the City;

F. Serving as the chief purchasing and business agent of the City;

G. Preparing and presenting information and recommendations to the Mayor and City Council regarding the operations and policies of the City;

H. Policy advice to elected officials, and open communication with the community so as to foster responsive and courteous public service.

The Council shall meet with Employee as determined necessary by the Council for the purpose of setting goals and priorities for Employee's performance. In performing the services contemplated by this Agreement, the Employee shall faithfully observe and comply with all federal, state and local laws, City Charter, ordinances and regulations applicable to the service to be rendered under this Agreement.

Section 3: Compensation

A. Base Salary: The Employer agrees to pay the Employee an annual base salary of $116,500, retroactive to August 1, 2005, payable in installments at the same time that the other management employees of the Employer are paid.

B. Employee's annual base salary shall be automatically amended to reflect any cost of living adjustments that are provided by Council to management employees of the City.

C. March 1, 2006, and on an annual basis thereafter, consideration shall be given to increased compensation based upon Employee's satisfactory performance of Employee's duties and functions, and satisfaction of the goals and priorities established by the Council. Such increased compensation may come in the form of cost of living and/or performance adjustments to Employee's base salary, performance bonuses, or both.

D. The Employer will look to the following cities for guidance in determining appropriate compensation provided to employee: Beaverton, Gresham, Hillsboro, Lake Oswego, Milwaukie, Oregon City, Sherwood, Tualatin, and West Linn, Oregon.

Section 4: Health, Disability and Life Insurance Benefits

A. The Employer agrees to provide the same health and welfare benefits for the Employee and his dependents, and to contribute towards the cost of such benefits, to the same degree that it provides and contributes to all other management employees of the City. In the event Employee is required to contribute toward the premium cost of such benefits, Employee agrees to the deduction of such amounts from his paycheck.

B. The Employer agrees to provide and to contribute towards the cost of a standard life insurance policy for the Employee to the same degree that it provides and contributes to all other management employees of the City.

C. The Employer agrees to put into force and to contribute towards the cost of long term disability coverage for the Employee to the same degree that it provides and contributes to all other management employees of the City.

D. The Employer shall make a monthly contribution to the Employee's VEBA account in the same amount or at the same rate as made for the management employees of the City.

E. The Employer shall contribute up to $1,000 per year, based upon submittal of actual billings by the Employee for Life Insurance, Long Term Care Insurance, or both, as selected by the Employee. The Employee shall name the beneficiary of the insurance policy(ies).

Section 5: Vacation, Management, and Sick Leave

A. The Employee shall accrue sick leave and vacation leave in the same manner and amount as is accrued by other management employees of the City, except that Employee shall continue to accrue vacation at the 20 year service level. At the commencement of Employee's employment as City Manager, Employee may carry over any existing banks of leave that he has earned while previously employed with the City.

B. Upon signing of this agreement, the Employee shall receive a total of five (5) days of management leave each fiscal year, to be taken consistent with City personnel policies as applied to management employees. Management leave does not accrue from one fiscal year to the next, and any unused management leave remaining in the Employee's management leave bank will be lost if not used by the end of each fiscal year.

C. Except as otherwise stated in this Section, the Employee is entitled to accrue all unused leave without limit. In the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all vacation time, and all management leave accrued prior to the date of termination. Employee shall not be eligible to receive any cash or retirement credit for unused sick leave.

Section 6: Vehicle Allowance

The Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided, the sum of $4,020 per year, payable bi-weekly on regular paydays of the City, as a vehicle allowance to be used to operate and maintain a vehicle. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon such vehicle and shall further be responsible for all expenses attendant to the operation, maintenance, repair, and regular replacement of said vehicle. The Employer shall reimburse the Employee at the IRS standard mileage rate for any business use of the vehicle beyond a fifty-mile radius of the City Administrative building.

Section 7: Retirement

The Employer agrees to pay an amount equal to the City's retirement plan contribution and deferred compensation contributions as are made for all other management employees in equal proportionate amount each pay period.

Section 8: Professional and Civic Memberships and Travel

The Employer agrees to budget for and to pay for professional dues and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer. Eligible professional organizations include the International City Managers' Association, the Government

Finance Officers' Association, and such other organizations as may be approved from time to time by the City Council.

The Employer agrees to budget for and to pay for travel and subsistence expenses of the Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of the Employee and to pursue necessary official functions for the Employer, including but not limited to the ICMA Annual Conference or the GFOA Annual Conference, the League of Oregon Cities, and such other national, regional, state, and local governmental groups and committees in which the Employee serves as a member, as may be approved from time to time by the City Council.

The Employer agrees to budget for and to pay for travel and subsistence expenses of the Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer, as may be approved from time to time by the City Council.

The Employer acknowledges the value of having the Employee participate and be directly involved in local civic clubs or organizations. Accordingly, the Employer shall pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local civic clubs or organizations, as may be approved from time to time by the City Council.

Section 9: Termination

For the purpose of this agreement, termination shall occur when:

A. The majority of the governing body votes to terminate the Employee at a duly authorized public meeting.

B. If the Employer, citizens, or the legislature acts to amend any provisions of the City Charter pertaining to the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the form of government, the Employee shall have the right to declare that such amendments constitute termination.

C. If the Employer reduces the base salary, compensation or any other financial benefit of the Employee, unless it is applied in no greater percentage than the average reduction of all department heads, such action shall constitute a breach of this agreement and will be regarded as a termination.

D. If the Employee resigns following an offer to accept resignation, whether formal or informal, by the Employer, then the Employee may declare a termination as of the date of the suggestion.

Written notice of a breach of contract shall be provided in accordance with the provisions of Section 18.

Section 10: Severance

In the event Employee is terminated by the City Council during such a time that Employee is willing and able to perform Employee's duties under this Agreement, then in that event Employer agrees to pay Employee a lump sum cash payment equal to six (6) months aggregate salary. Employer will also continue, at its expense, Employee's health and welfare and life insurance benefits for 6 months, or until Employee is professionally reemployed, whichever comes first. In the event Employee is terminated for gross negligence or misconduct that is deemed detrimental to the best interests of the City, Employer shall have no obligation to pay any of the severance payments or benefits provided in this paragraph.

Section 11: Resignation

In the event that the Employee voluntarily resigns his/her position with the Employer, the Employee shall provide a minimum of 30 days notice unless the parties agree otherwise.

Section 12: Performance Evaluation

The Employer shall annually review the performance of the Employee in August subject to a process, form, criteria, and format for the evaluation which shall be mutually agreed upon by the Employer and the Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within 30 days of the evaluation meeting.

The date during which the annual performance evaluation must be conducted may be adjusted by mutual consent of the parties.

Section 13: Hours of Work

It is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer, and to that end the Employee shall be allowed to establish an appropriate work schedule.

Section 14: Outside Activities

The employment provided for by this Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with nor a conflict of interest with his or her responsibilities under this Agreement.

Section 15: Indemnification

The City agrees to defend, hold harmless, and indemnify the Employee from any and all demands, claims, suits, actions, and legal proceedings brought against Employee in his individual capacity, or in his official capacity as agent and employee of the City, as to any actions of Employee within the scope of his employment. The City agrees to pay premiums on

appropriate insurance policies through the City's normal insurance program and through the Public Officials Liability Insurance Program of the International City Management Association.

Section 16: Bonding

The Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

Section 17: Other Terms and Conditions of Employment

The Employer, only upon agreement with the Employee, shall fix any such other terms and conditions of employment, as it may determine from time to time, relating to the performance of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the City of Tigard Charter or any other law.

Except as otherwise provided in this Agreement, the Employee shall be entitled to the highest level of benefits that are enjoyed by department heads of the Employer as provided in the Charter, Code, Personnel Rules and Regulations or by practice.

Section 18: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

(1) EMPLOYER: Mayor
City of Tigard
13125 SW Hall Blvd.
Tigard, Oregon 97223

(2) EMPLOYEE: Craig Prosser
1199 Larch St.
Lake Oswego, Oregon 97034

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 19: General Provisions

A. Integration. This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

B. Binding Effect. This Agreement shall be binding on the Employer and the Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective on September 13, 2005.

D. Severability. The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

Section 20: Arbitration

The parties agree that any dispute about the validity, interpretation, effect or alleged violation of this Agreement by either Employee or the City must be submitted to final and binding arbitration pursuant to the then effective arbitration rules of Arbitration Service of Portland, Inc. or the American Arbitration Association, whichever organization is selected by the party who first initiates arbitration by filing a claim in accordance with the filing rules of the organization selected. The parties agree that the prevailing party will be entitled to recover its reasonable attorneys' fees, costs, and damages from the losing party that may be incurred as a result of the arbitration claim. The parties agree that judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

IN WITNEES WHEREOF, the CITY OF TIGARD, OREGON has cause this Agreement to be signed and executed and the EMPLOYEE has signed and executed this Agreement, both in duplicate, on the date first written above.

Craig Dirksen, Mayor
City of Tigard

Craig Prosser, City Employee

ATTEST: City Recorder

APPROVED AS TO FORM
City Attorney

AGENDA ITEM # _____
FOR AGENDA OF September 13, 2005

CITY OF TIGARD, OREGON
LOCAL CONTRACT REVIEW BOARD (LCRB) AGENDA ITEM SUMMARY

ISSUE/AGENDA TITLE Reimbursement to Venture Properties for Waterline Construction

PREPARED BY: Brian Rager DEPT HEAD OK BR for DK CITY MGR OK CL

ISSUE BEFORE THE LOCAL CONTRACT REVIEW BOARD

Shall the LCRB authorize the reimbursement of funds to Venture Properties for the construction of a large diameter transmission waterline through the Summit Ridge Subdivision development?

STAFF RECOMMENDATION

Staff recommends the LCRB authorize the reimbursement of $124,665.06 to Venture Properties.

INFORMATION SUMMARY

Section 10.070.C of the LCRB Rules provides that when a developer is required by condition of approval in a land use action to construct public improvements, the City can consider the developer a sole source and is not required to bid the work in a competitive process. Venture Properties was conditioned to install an 18-inch public transmission waterline through their Summit Ridge Subdivision development that will support the 550-foot pressure zone improvements in that area. Venture Properties completed that work and the waterline is now ready for use.

The City will pay (reimburse) only for the cost of the over-sizing. Over-sizing is when a developer is required to install a larger line than what the development specifically needs, but is necessary for the benefit of the overall water system. Staff reviewed the cost information and verified that the expenses were justified and corresponded to the approved plans for the water line.

The attached memorandum provides additional information about the improvements and the requested action.

OTHER ALTERNATIVES CONSIDERED

n/a

VISION TASK FORCE GOAL AND ACTION COMMITTEE STRATEGY

n/a

ATTACHMENT LIST

1. Staff memo, dated August 26, 2005
2. Map showing the waterline in relation to Summit Ridge

FISCAL NOTES

The amount of reimbursement to Venture Properties is $124,665.06. Each year, the City budgets funds in the Water SDC Fund to cover expenses for pipeline extensions or waterline over-sizing in private developments. Adequate funds were budgeted in FY 04/05 for this project, but Staff was not able to process this reimbursement within that fiscal year window. However, there are sufficient appropriations in the FY 2005-06 Water SDC Fund budget to allow this expenditure.

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MEMORANDUM

TO: Local Contract Review Board

FROM: Brian Rager, Assistant Public Works Director

RE: Reimbursement to Venture Properties for Water Line Construction

DATE: August 26, 2005

Background

Section 10.070.C of the City of Tigard Local Contract Review Board Rules, states that:

> "At times, private developers provide public improvements for the City as required by a condition of land use approval or as required by a development agreement with the City. The developer in those circumstances is conclusively deemed to be a sole source for the provision of the public improvements, without the need for findings. No competitive process is required to enter into a development agreement that includes the provision of public services by a developer or for a developer to provide and the City to accept public improvements as required by a condition of approval."

The City has been working toward making improvements to the 550-foot pressure zone for the public water system. A 3.0 million gallon (MG) reservoir is currently proposed near the top of Bull Mountain, in the vicinity of the Alberta Rider Elementary School and the Arbor Summit and Summit Ridge subdivision developments. That reservoir will feed the 550-foot pressure zone, which lies to the south of Bull Mountain Road.

In order to serve the 550-foot pressure zone, an 18-inch transmission waterline is needed that will connect to the future reservoir and run south through the Summit Ridge development.

The Summit Ridge Subdivision (Land Use No. SUB 2003-00009) was approved with a condition that required the developer to install the portion of the 18-inch transmission line through the site. Condition No. 29 reads as follows:

> *"Prior to commencing onsite improvements, the applicant's engineer shall submit construction plans that show they will install an 18-inch water distribution line through this project along a route approved by the Public Works Director and City Engineer. The applicant's engineer shall also provide an engineer's estimate for the 18-inch line. For the portion of line that will serve this development, the estimate must clearly show the difference in cost to upsize this line from 8-inch to 18-inch. "*

In accordance with 10.070.C of the LCRB Rules, Staff deemed it appropriate to get the waterline installed as a part of the development to avoid having to re-excavate the streets in the future, and because we anticipate the future reservoir to be constructed within the next few years. The developer has completed the 18-inch waterline through the site and the line is now ready to use once the reservoir is in place.

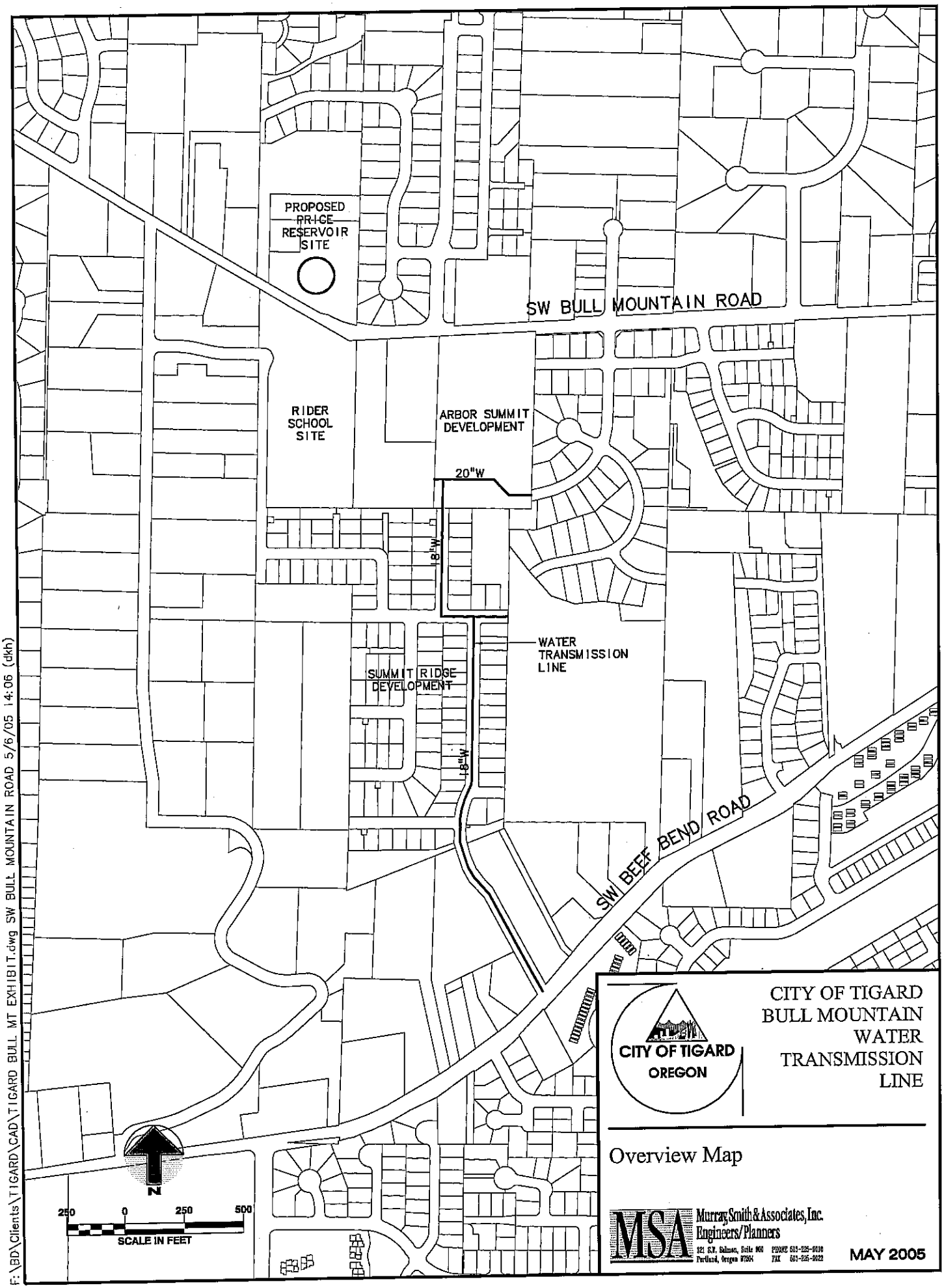
Value of Improvements

Venture Properties provided information to the City that showed the reimbursable costs to construct the transmission line was $124,665.06. Staff reviewed the cost information and verified that the expenses were justified and in line with the approved plans for the water line.

Staff budgets funds each fiscal year to cover pipeline extensions or waterline over-sizing in private developments. "Over-sizing" is when a developer is required to install a larger line than what their development specifically needs, but is necessary for the benefit of the overall water system. There were funds budgeted in FY 04/05 in this line item to cover the Summit Ridge reimbursement. However, Staff was not able to process the reimbursement request within the limits of the FY 04/05 budget window. Fortunately, there are sufficient appropriations in the FY 05/06 Water SDC Fund budget to allow this expenditure.

Recommendation

Staff finds that Venture Properties complied with Condition No. 29 of SUB 2003-00009, and recommends the LCRB authorize payment to Venture Properties in the amount of $124,665.06.



CITY OF TIGARD
OREGON

CITY OF TIGARD
BULL MOUNTAIN
WATER
TRANSMISSION
LINE

Overview Map

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MAY 2005

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