

Hearing Date: February 26, 2013 Time: 7:30 PM

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



120 DAYS = N/A

**SECTION I. APPLICATION SUMMARY**

**FILE NAME:** HUMMEL ANNEXATION  
**CASE NO:** Zone Change Annexation (ZCA) ZCA2012-00002

**APPLICANT/  
OWNER:** Bill & Geraldine Hummel  
 14695 SW 133<sup>rd</sup> Ave.  
 Tigard, OR 97223

**PROPOSAL:** A request to annex one parcel (1.01 acres) on SW 133<sup>rd</sup> Avenue to obtain City of Tigard sanitary sewer service for a septic system that cannot be repaired.

**LOCATION:** 14695 SW 133<sup>rd</sup> Avenue; Washington County Tax Assessor's Map 2S109AC, Tax Lot 0500.

**COUNTY ZONE:** R6: Residential, 5 units/acre minimum density, 6 units/acre maximum density. The purpose of the R-6 District is to implement the policies of the Comprehensive Plan for areas designated for residential development at no more than six (6) units per acre and no less than five (5) units per acre, except as specified by Section 300-2, Section 300-5, or Section 303-6. The intent of the R-6 District is to provide the opportunity for more flexibility in development than is allowed in the R-5 District.

**EQUIVALENT  
CITY ZONE:** 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 described in Community Development Code Chapters 18.320 and 18.390; Comprehensive Plan Goal 1.1, Goal 11.1 (Policy 4), Goal 11.3 (Policy 6), and Goal 14.2 (Policy 1-4); ORS Chapter 222; and Metro Code Chapter 3.09.

## SECTION II. STAFF RECOMMENDATION

Staff recommends that the Council find that the proposed annexation (ZCA2012-00002) meets all the approval criteria as identified in ORS Chapter 222, Metro Code Chapter 3.09, Community Development Code Chapters 18.320 and 18.390, and the following Comprehensive Plan Goals and Policies: Goal 1.1; Goal 11.1, Policy 4; Goal 11.3, Policy 6; and Goal 14.2, Policy 1-4. Therefore, staff recommends APPROVAL of ZCA2012-00002 by adoption of the attached ordinance.

## SECTION III. BACKGROUND INFORMATION

The 1.01 acre site is developed with a single family residence and accessory structure. The annexation request has been initiated by the property owners (Bob & Geraldine Hummel) to obtain city sewer for a failing septic system. There is a public sanitary line in SW 133<sup>rd</sup> to serve the site.

The home is owner occupied and all property owners and registered voters in the proposed territory have consented to the annexation; therefore an election is not required. In accordance with city policy and to prevent the formation of an island, the City invited property owners of two adjacent parcels to join the annexation (tax lots 300 and 400 to the north of the subject property). Neither owner indicated interest in annexing to the City.

## SECTION IV. APPLICABLE CRITERIA, FINDINGS AND CONCLUSIONS

**City:** Community Development Code Chapters 18.320 and 18.390; Comprehensive Plan Goal 1.1; Goal 11.1 (Policy 4), and Goal 11.3 (Policy 6), Goal 14.2 (Policies 1-4).

**State:** ORS Chapter 222

**Regional:** Metro Code Chapter 3.09

### A. CITY OF TIGARD COMMUNITY DEVELOPMENT CODE (TITLE 18)

Staff has determined that the proposal is consistent with the relevant portions of the Community Development Code based on the following findings:

#### Chapter 18.320.020.B: Approval Process and Standards.

**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;**

The City of Tigard Comprehensive Plan's Public Facilities and Services Chapter states that for the purposes of the Comprehensive Plan, public facilities and services refer to stormwater management, water supply and distribution, wastewater management, community facilities, and private utilities. In addition the comprehensive Plan Glossary includes public safety, parks, and transportation. All services are available to the proposed annexation site and have adequate capacity to serve a single-family dwelling. Each service/facility is discussed in further detail below.

**Water – City of Tigard/Tigard Water District.** The property lies within the Tigard Water Service Area. The home is currently and will continue to be served with city water. No additions or change of use is proposed with this application. There is adequate capacity to continue serving the site with water.

**Sewer – City of Tigard/Clean Water Services.** The home is currently served by septic but cannot obtain permits to repair the system because public sanitary service is available in SW 133<sup>rd</sup> Avenue. Sanitary service is provided by the City of Tigard in this area and there is sufficient capacity to serve the existing single-family residence.

**Stormwater – Clean Water Services.** Clean Water Services is the current provider of stormwater services in this area. There is a City of Tigard storm line available in SW 133<sup>rd</sup> Avenue with adequate capacity; however the applicant is not proposing to connect to the storm system at this time.

**Streets – City of Tigard Engineering Division.** The subject property is located on SW 133<sup>rd</sup> Avenue, and the portion adjacent to the site is within the Tigard city limits. The proposed annexation will not affect this access; however, the property is within the Washington County Urban Road Maintenance District and will be removed from the district upon annexation.

**Police – City of Tigard Police Department.** Police services are currently provided by the Washington County Sheriff. If approved, the property will be withdrawn from the Enhanced Sheriff's Patrol District. The City of Tigard Police Department was notified of the proposed annexation and had no objection to the proposed annexation. Tigard Police have adequate capacity to serve one additional single family home and doing so will not significantly reduce the level of services available to other land within the City of Tigard.

**Fire – Tualatin Valley Fire and Rescue (TVF&R).** The subject property is in Tualatin Valley Fire and Rescue's (TVF&R's) service area. The TVF&R District currently provides services to site, which will not change following annexation. The Fire District has personnel and equipment in the area that can respond to an emergency incident and implement such actions as may be necessary for fire and/or rescue operations.

**Parks–City of Tigard.** There is an existing City of Tigard neighborhood park on Bull Mountain Road near the proposed annexation site. The addition of one single-family residence will not adversely impact the city's ability or capacity to provide parks.

**CONCLUSION:** Based upon this review, staff finds that all public services and facilities (as defined by the Comprehensive Plan) are available to the proposed annexation territory and have sufficient capacity to provide service. The proposed annexation will not reduce the level of services within the City of Tigard.

**2. The applicable Comprehensive Plan policies and implementing ordinance provisions have been satisfied.**

**FINDINGS:** The following Comprehensive Plan goals and policies apply to the proposed annexation: Goal 1.1; Goal 11.1, Policy 4; Goal 11.3, Policy 6; and Goal 14, Policy 1- 4. Staff has determined that the proposal has satisfied the applicable Comprehensive Plan policies based on the following findings:

**Goal 1.1: Citizen Involvement. The City shall provide citizens, affected agencies and other jurisdictions the opportunity to participate in all phases of the planning process.**

The City maintains an ongoing citizen involvement program. To assure citizens will be provided an opportunity to be involved in all phases of the planning process, the City provides notice for Type IV land-use applications. The City posted, mailed and published notice of the public hearing as follows. The City posted the hearing notice at four public places on February 4, 2013: Tigard Library, Tigard City Hall, Tigard Permit Center, and at the subject property on 14695 SW 133<sup>rd</sup> Avenue. The City published notice of the hearing in *The Tigard Times* for two successive weeks (February 14 and February 21, 2013) prior to the February 26, 2013, public hearing. The City also mailed notice to all interested parties and surrounding property owners within 500 feet on February 4, 2013.

**Goal 11.1: Public Facilities and Services.**

**Policy 4. The City shall require the property to be located within the city limits prior to receiving City stormwater services.**

There is a city stormwater line in SW 133<sup>rd</sup> Avenue that will be available to serve the site upon annexation; however, the applicant has not indicated any intention of obtaining this service.

**Goal 11.3: Public Facilities and Services.**

**Policy 6. The City shall require the property to be located within the city limits prior to receiving City wastewater services.**

City sanitary service is available in SW 133<sup>rd</sup> Avenue. The applicant is requesting annexation in order to obtain service from this line and will need to obtain the proper City of Tigard permits in order to make the connection to sanitary service.

**Goal: 14.2. Implement the Tigard Urban Services Agreement through all reasonable and necessary steps, including the appropriate annexation of unincorporated properties.**

**Policy 1. The City shall assign a Tigard zoning district designation to annexed property that most closely conforms to the existing Washington County zoning designation for that property.**

The applicable Tigard zoning district designations are addressed below in the findings for Section 18.320.020.C.

**Policy 2. The City shall ensure that capacity exists, or can be developed, to provide needed urban level services to an area when approving annexation.**

Capacity has been addressed above, consistent with this policy.

**Policy 3. The City shall approve proposed annexations based on findings that the request:**

**A. can be accommodated by the City's public facilities and services; and**

The availability of the City's public facilities and services has been addressed above, consistent with this policy.

**B. is consistent with applicable state statute.**

As reviewed in this report, staff finds that the provisions of ORS 222 have been met, consistent with this policy.

**Policy 4. The City shall evaluate and may require that parcels adjacent to proposed annexations be included to: A) avoid creating unincorporated islands within the City; B) enable public services to be efficiently and effectively extended to the entire area; or C) implement a concept plan or sub-area master plan that has been approved by the Planning Commission or City Council.**

The subject site's east and west boundaries abut the City of Tigard. Washington County parcels lie to the north and south. Pursuant to the City's annexation policy and to avoid the creation of an island, the City invited the two northern property owners to join the annexation. No property owners responded to the City's invitation. Public services are available as determined in this report.

CONCLUSION: There have been invitations for public participation in the application review process. The city has coordinated with all jurisdictions and agencies within/near the annexation site. The City of Tigard has the services/facilities available and at adequate capacity to serve the site. The proposed annexation is consistent with applicable Comprehensive Plan policies.

#### **Chapter 18.320.020.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.**

FINDINGS: All of the subject property is currently zoned R-6 (Washington County). This zone is intended for residential development at no more than 6 units per acre and no less than 5 units per acre. Table 18.320.1 in the TDC summarizes the conversion of the County's plan and zoning designations to City designations which are most similar. According to this table, the City designation most similar to R-6 is R-7 zoning.

CONCLUSION: Upon annexation the property will be zoned R-7, which most closely implements Washington County's comprehensive plan and zoning designations (R6). This criterion is met.

#### **Chapter 18.390.060: Type IV Procedure**

**Annexations are processed by means of a Type IV procedure, as governed by Chapter 18.390 of the Community Development Code (Title 18) using standards of approval contained in 18.390.020.B, which**

were addressed in the previous section. Chapter 18.390 requires City Council to hold a hearing on an annexation. It also requires the City to provide notice at least 20 days prior to the hearing by mail and to publish notice at least 10 business days prior to the hearing; the City mailed notice on February 4, 2013, and published public notice in *The Tigard Times* for two successive weeks (February 14 & February 21, 2013) prior to the February 26, 2013 public hearing.

**Additionally, Chapter 18.390.060 sets forth five factors for consideration when making a Type IV decision:**

**1. The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197;**

FINDINGS: The city's Comprehensive Plan has been acknowledged by the Land Conservation and Development Commission to be in compliance with state planning goals and as reviewed above, the annexation proposal is consistent with Tigard Comprehensive Plan goals and policies.

CONCLUSION: The proposal is consistent with the city's acknowledged Comprehensive Plan. Therefore, the proposal complies with statewide planning goals, including citizen involvement, public facilities, transportation, and urbanization.

**2. Any federal or state statutes or regulations found applicable;**

FINDINGS:

**ORS 222:**

State law (ORS 222.120(4)(b), ORS 222.125 and ORS 222.170(1)) allows for a city to annex contiguous territory when owners of land in the proposed annexation territory submit a petition to the legislative body of the city. In addition, ORS 222.111(2) allows for a city to act on its own motion to annex contiguous territory. A city is not required to hold an election for such an annexation if it follows the noticing procedures for a public hearing per ORS 222.120.

ORS 222.120 requires the city to hold a public hearing before its legislative body (City Council) and provide public notice to be published once each week for two successive weeks prior to the day of the hearing, in a newspaper of general circulation in the city, and shall cause notices of the hearing to be posted in four public places in the city for the same two week period.

The owners of the subject parcel have signed a petition for annexation to the City. The subject parcel is contiguous to the City's boundary. The City mailed notice on February 4, 2013, and published public notice in *The Tigard Times* for two successive weeks (February 14 & February 21, 2013) prior to the February 26, 2013 public hearing and posted the hearing notice for public view on February 4, 2013 in the Tigard Library, Tigard City Hall, Tigard Permit Center, and at the site on SW 133<sup>rd</sup> Avenue.

CONCLUSION: Staff finds that the provisions of ORS 222 have been met.

**3. Any applicable METRO regulations;**

Chapter 3.09 of the Metro Code (Local Government Boundary Changes) includes standards to be addressed in annexation decisions, in addition to local and state review standards. Staff has reviewed the Metro regulations for Local Government Boundary Changes and addressed the applicable regulations (Metro Code 3.09.045(d) & (e) and 3.09.050) below:

FINDINGS:

**Metro 3.09.045 (d) and (e)**

The proposed annexation is not being reviewed through an expedited process, but subsections (d) of Metro Code 3.09.050 requires that the standards of 3.09.045 (d) & (e) be addressed.

**(d) To approve a boundary change through an expedited process, the city shall:**

**(1) Find that the change is consistent with expressly applicable provisions in:**

**(A) Any applicable urban service agreement adopted pursuant to ORS 195.065;**

The Tigard Urban Service Agreement (TUSA) is between the City, County, Metro, and the service Districts for water, sewer, transportation, parks and public safety. The agreement outlines the role, provision, area, and planning/coordination responsibilities for service providers operating in the Tigard Urban Services Area. These services are addressed above at the beginning of this report.

The Urban Planning Area Agreement (UPAA) between the City and the County provides coordination of comprehensive planning and development, defines the area of interest, and includes policies with respect to the active planning area and annexation. The applicable annexation policies include the assignment of comprehensive plan and zoning designations addressed earlier in this report and acknowledgements that the City is the ultimate service provider of urban services within the Tigard Urban Service Area.

The City has followed all processing and notice requirements in the *UPAA*, providing Washington County with 45-day notice prior to the public hearing. The agreement states that “so that all properties within the Tigard Urban Service Area will be served by the City, the County and City will be supportive of annexations to the City.”

**(B) Any applicable annexation plan adopted pursuant to ORS 195.205;**

These statutes outline the process for annexations initiated by a city or district, including public hearings and voting procedures. This statute is not applicable since the annexation was initiated by the property owner. The applicant has submitted a petition to annex signed by both property owners that are also the registered voters.

**(C) Any applicable cooperative planning agreement adopted pursuant to ORS 195.020(2) between the affected entity and a necessary party;**

ORS195.020(2) speaks to cooperative agreements between counties or Metro with each special district that provides an urban service within the boundaries of the county or the metropolitan district. Special districts would include fire, water, school, and sewer districts. These districts are the same within the county and city with the exception of the sewer district, which is the City of Tigard. Planning for these areas will still be considered by the same special districts upon annexation due to existing agreements set up with the City.

**(D) Any applicable public facility plan adopted pursuant to a statewide planning goal on public facilities and services; and**

The City of Tigard Public Facility Plan was adopted in 1991 in compliance with statewide planning goals and Oregon Administrative Rule 660-11. A revised plan is currently being developed as part of periodic review. New Comprehensive Plan goals and policies for public facilities were adopted in 2008 (Goal 11), and the applicable goals and policies were addressed previously in this report. The proposed annexation is consistent with the Tigard Public Facility Plan.

**(E) Any applicable comprehensive plan; and**

The Tigard Comprehensive Plan applies in this case. Applicable policies are satisfied as addressed previously in this report.

**(2) Consider whether the boundary change would: (A) Promote the timely, orderly and economic provision of public facilities and services; (B) Affect the quality and quantity of urban services; and (C) Eliminate or avoid unnecessary duplication of facilities or services.**

The site is adjacent to the City in an area already serviced by sanitary facilities and water. Fire and police protection is provided by county wide services. Other services are offered through the Tigard Urban Services Agreement. The proposed annexation will allow the applicant to obtain city sanitary service. Quality, quantity, or duplication of services is not an issue at this location.

**(e) A city may not annex territory that lies outside the UGB, except it may annex a lot or parcel that lies partially within and outside the UGB. Neither a city nor a district may extend water or sewer services from inside a UGB to territory that lies outside the UGB.**

The property to be annexed is not outside the UGB. This criterion is not applicable.

**Metro 3.09.050 (b)**

**(b) Not later than 15 days prior to the date set for a change decision, the approving entity shall make available to the public a report that addresses the criteria in subsection (d) below, and that includes at a minimum the following:**

The staff report was available February 13, 2013, thirteen days prior to the public hearing. Tigard Development Code requires staff reports be available at least seven days prior to the hearing for Type II on Appeal and Type III applications. No specific number of days is outlined for Type IV procedures; however, the code does state that notice shall be sent at least 10 days prior to the public hearing indicating where all relevant materials and information may be obtained. This would include a staff report. The notice was sent twenty-three days prior to the hearing and no one requested a copy of the staff report. The Development Code states that Metro Code requirements be considered when making the final decision, but the requirements are not listed as approval criteria. Tigard City Council reviews and considers the findings of the staff report when making decisions.

**(1) The extent to which urban services presently are available to serve the affected territory including any extra territorial extensions of service;**

As addressed previously in this report, urban services are available to the affected territory.

**(2) Whether the proposed boundary change will result in the withdrawal of the affected territory from the legal boundary of any necessary party; and**

The proposed territory will remain within Washington County but will be required to be withdrawn from the Washington County Enhanced Sheriff's Patrol District and Urban Road Service District upon completion of the annexation. This withdrawal is incorporated into the proposed ordinance.

**(3) The proposed effective date of the boundary change.**

The public hearing will take place February 26, 2013. If the Council adopts findings to approve ZCA2012-00002, the effective date of the annexation will be upon filing with the Secretary of State office per Oregon Revised Statutes (ORS 222.180).

**(c) The person or entity proposing the boundary change has the burden to demonstrate that the proposed boundary change meets the applicable criteria.**

The proposed boundary change meets the applicable criteria as demonstrated in this staff report.

**(d) To approve a boundary change, the reviewing entity shall apply the criteria and consider the factors set forth in subsections (d) and (e) of Section 3.09.045.**

The criteria and factors outlined in subsections (d) and (e) of Section 3.09.045 have been previously addressed in this report.

**CONCLUSION:** As shown in the above findings the proposed annexation satisfies the Metro Code regulations related to Local Government Boundary Changes.

(Tigard CDC 18.390.060 continued)

4. Any applicable comprehensive plan policies; and

FINDINGS: Findings addressing the applicable Comprehensive Plan policies were provided previously in this report.

CONCLUSION: As previously demonstrated, the proposed annexation is consistent with all applicable comprehensive plan policies.

5. Any applicable provisions of the City's implementing ordinances.

FINDINGS: Resolution 12-09 extended previously approved incentives for property owners that voluntary annex into the city limits through February 2013. These incentives include waiver of the annexation application fee, assistance with paperwork and, phasing in of increased property taxes. These incentives have been extended to the applicant. As demonstrated in previous sections of this report, the proposed annexation is consistent with all other applicable provisions of the Tigard Development Code.

CONCLUSION: Based upon the findings above, all applicable provisions of the city's implementing ordinances are satisfied

SECTION VII. OTHER STAFF COMMENTS

The City of Tigard Police Department Public Information Officer, Jim Wolf, and the City of Tigard Greg Berry, Public Works Project Engineer both commented that there were no issues with the project.

SECTION VIII. AGENCY COMMENTS

Century-Link noted that the site was outside the Qwest service area.

Washington County Planning and Development Services and Tualatin Valley Fire and Rescue reviewed the proposal and stated no objections to it.

No other agency comments were received.

SECTION IX. PUBLIC COMMENTS

The City mailed notice to surrounding property owners within 500 feet. No written public comments were received. Two phone calls were received to inquire about future development of the site associated with the annexation. Staff is not aware of any future development plans for the site. The applicant states that annexation is requested to obtain city sanitary service because the existing septic system cannot be repaired.

*Cheryl Caines*

PREPARED BY: Cheryl Caines  
Associate Planner

February 14, 2013  
DATE

*Tom McGuire*

REVIEWED BY: Tom McGuire  
Interim Asst. Community Development Director

February 14, 2013  
DATE