NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
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CITY OF Salem AT YOUR SERVICE

Si necesita ayuda para comprender esta informacion, por favor llame 503-588-6173

DECISION OF THE HEARINGS OFFICER

CONDITIONAL USE CASE NO. CU16-01

APPLICATION NO. : 15-121963-ZO

NOTICE OF DECISION DATE: March 8, 2016

SUMMARY: A request for a Conditional Use Permit to allow a multi-family use on the subject property.

REQUEST: A proposed Conditional Use Permit to allow development of a 96-unit apartment complex, for property approximately 2.88 acres in size, zoned IC (Industrial Commercial), and located in the 1700-1800 Block of 23rd Street SE - 97302 (Marion County Assessors Map and Tax Lot number: 073W35AD/ 00800).

APPLICANT: Bo Rushing, Rushing Group

LOCATION: 1700-1800 Block of 23rd Street SE

CRITERIA: Salem Revised Code Chapter 240

DECISION: The Hearings Officer **DENIED** Conditional Use Case No. CU16-01. A copy of the decision is attached.

Application Deemed Complete:	January 14, 2016
Public Hearing Date:	February 10, 2016
Notice of Decision Mailing Date:	March 8, 2016
Decision Effective Date:	March 24, 2016
State Mandate Date:	May 13, 2016

Case Manager: Aaron Panko, APanko@cityofsalem.net; 503.540.2356 AP

This decision is final unless written appeal from an aggrieved party is filed with the City of Salem Planning Division, Room 305, 555 Liberty Street SE, Salem OR 97301, no later than **5:00 p.m., March 23, 2016.** Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter 240.

The appeal must be filed in duplicate with the City of Salem Planning Division. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Salem Planning Commission will review the appeal at a public hearing. After the hearing, the Salem Planning Commission may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review at the Planning Division office, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

http://www.cityofsalem.net/planning

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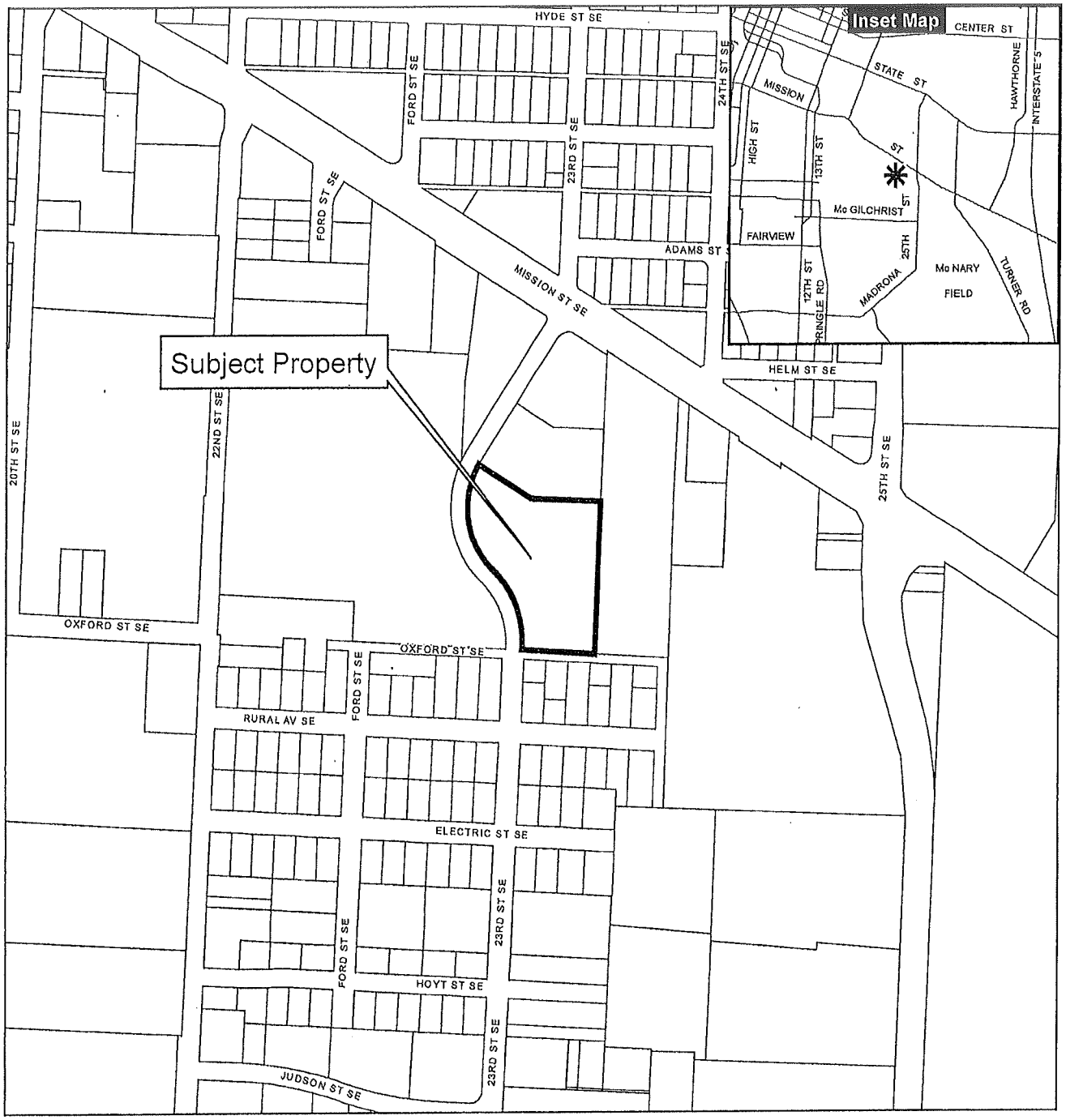
Vicinity Map
1700-1800 Block of 23rd Street SE



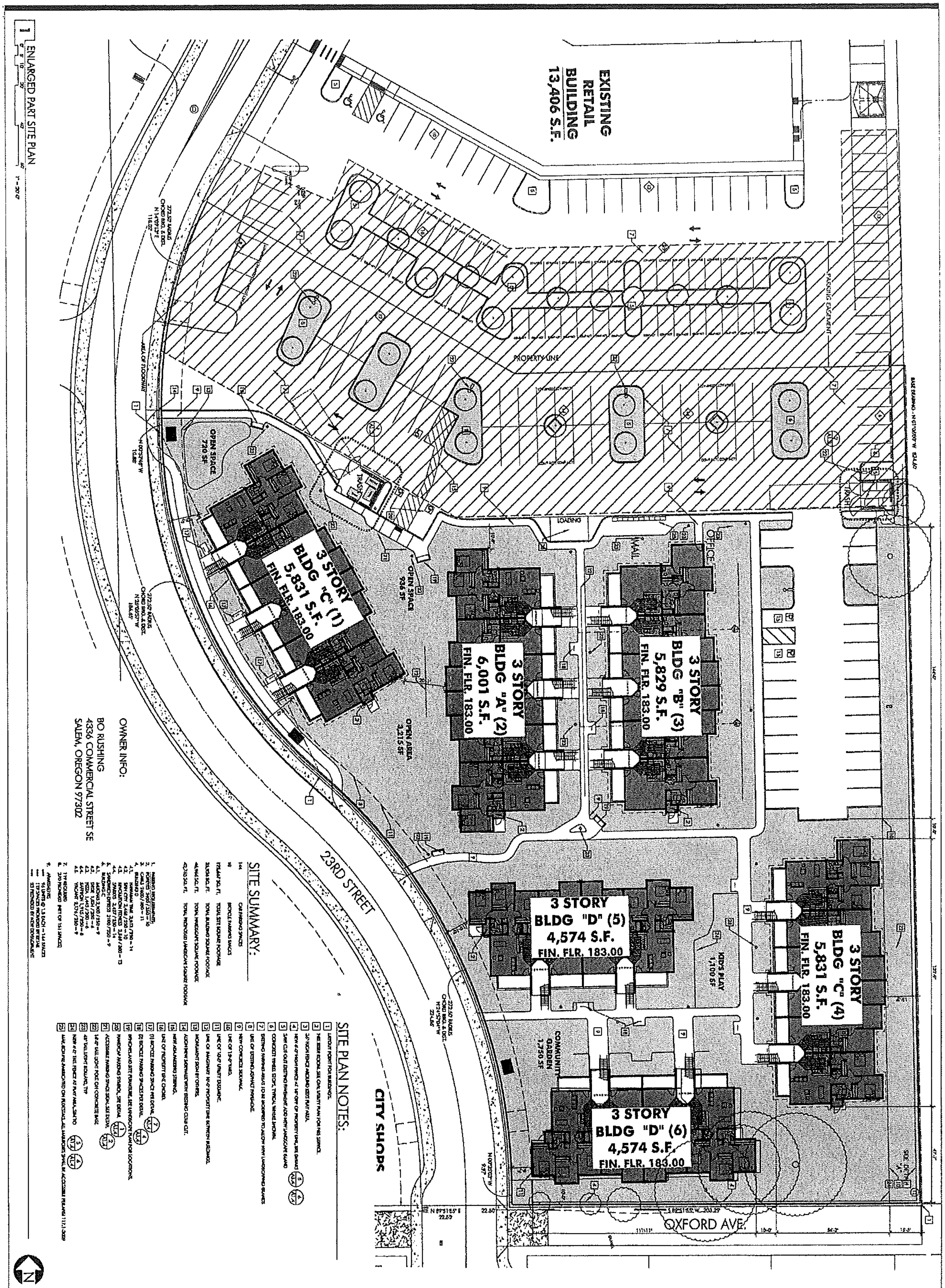
Legend

- Taxlots
- Urban Growth Boundary
- City Limits
- Outside Salem City Limits
- Historic District
- Schools
- Parks

0 100 200 400 Feet

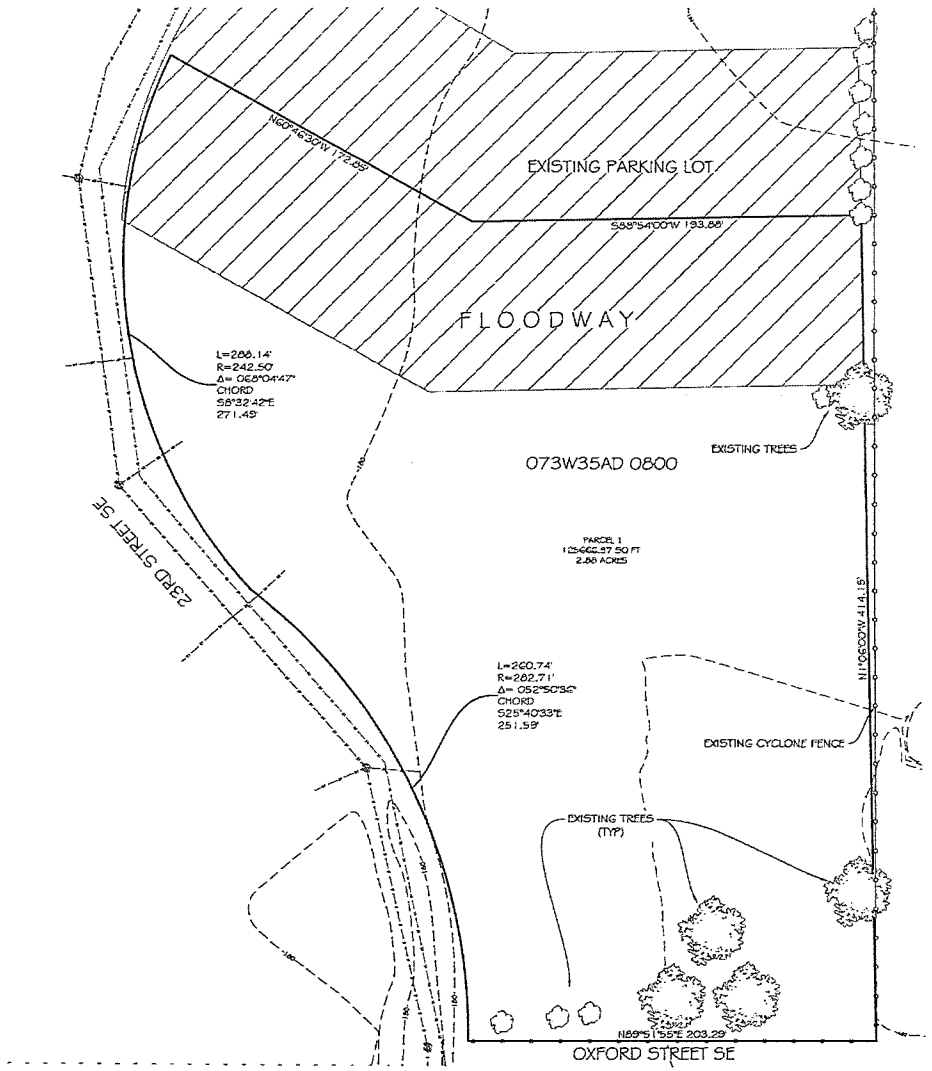
CITY OF Salem AT YOUR SERVICE
Community Development Dept.

G:\CD\PLANNING\Aaron\2015\Conditional Use\23rd and Mission\VicinityMap.mxd - 12/28/2015 @ 12:38:47 PM



MAY'S LANDING

1500 BLOCK OF 23RD ST SE SALEM, OREGON



LEGEND:
FLOODWAY

0 30' 60' 90'

PROJECT DELIVERY GROUP
Engineers | Land Surveyors | Project Managers

DATE PLOTTED:

1252 23RD STREET SE

RUSING MISSION STREET, LLC

SALEM, OREGON

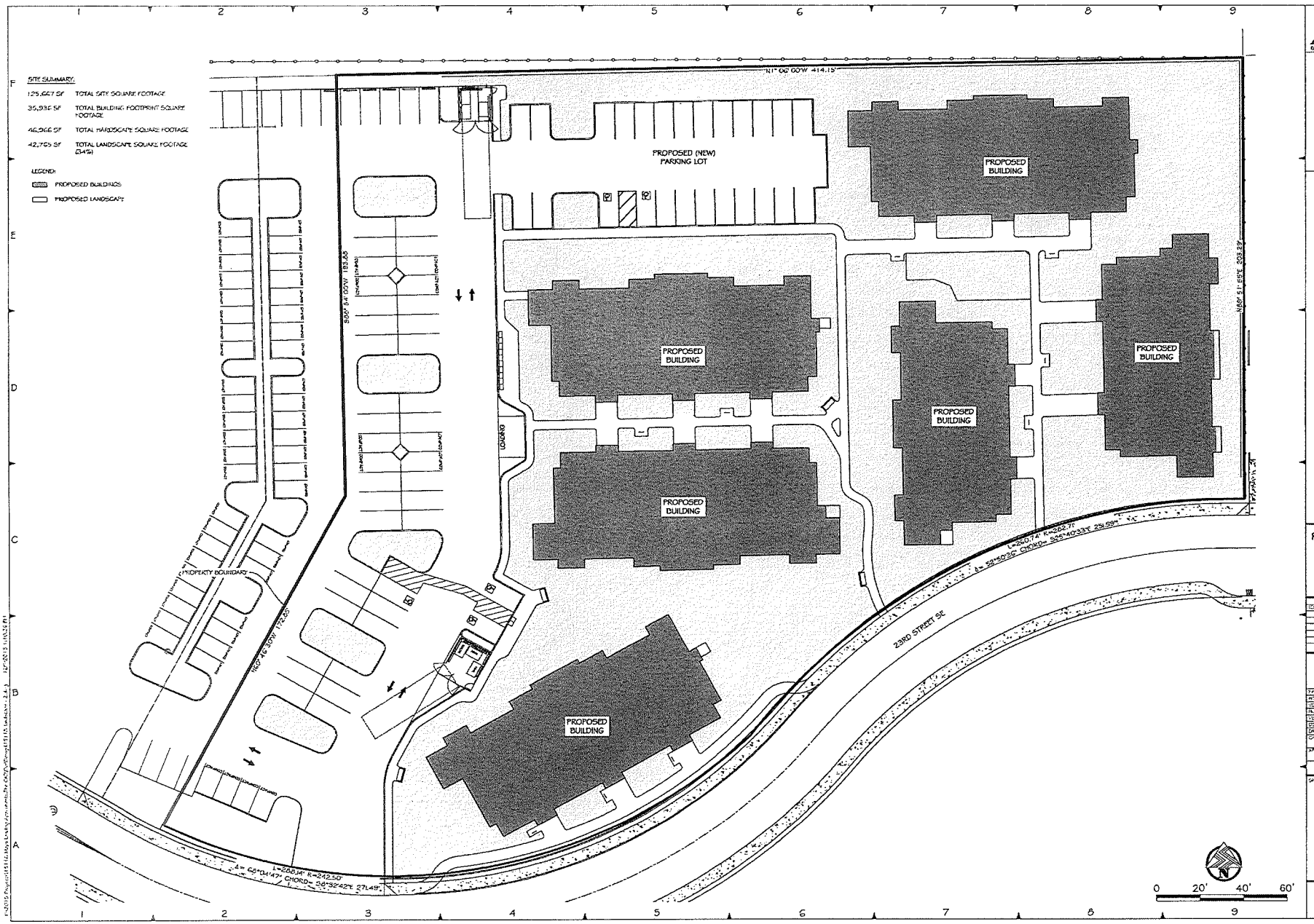
NO	DESCRIPTION	DATE	BY

PROJECT NO: 15118
NOTE DATE: ####
DRAFT DATE: ###
PRINT SCALE: AS SHOWN
TEXT SCALE: AS SHOWN
DESIGN: BV
DRAWN: JLS
CHECKED:
APPROVED:

SHEET TITLE

EXISTING CONDITIONS

C-1.01



PROJECT DELIVERY GROUP
Engineers | Land Surveyors | Project Managers

DATE ISSUED:

1252 23RD STREET SE

RUSHING MISSION STREET, LLC

SALEM, OREGON

REVISIONS

NO.	DESCRIPTION	DATE	BY

PROJECT NO. 15118
SCALE (INITIAL) 1"=20'
SCALE (DATUM) 1"=20'
PLOT SCALE: AS SHOWN
PLOT SCALE: AS SHOWN
DESIGNED: BV
DRAWN: JSL
CHECKED: BV
APPROVED:

SHEET TITLE

PROPOSED LANDSCAPING AREAS

L-1.01

CITY OF SALEM
BEFORE THE HEARINGS OFFICER

A CONDITIONAL USE PERMIT REQUEST FOR DEVELOPMENT OF A 96-UNIT APARTMENT COMPLEX FOR PROPERTY APPROXIMATELY 2.88 ACRES IN SIZE, ZONED IC (INDUSTRIAL COMMERCIAL), AND LOCATED IN THE 1700-1800 BLOCK OF 23RD STREET SE, SALEM, OREGON	Conditional Use Case No. 16-01 FINDINGS OF FACT CONCLUSIONS AND DECISION

DATE AND PLACE OF HEARING:

February 10, 2016, Salem City Council Chambers, 555 Liberty Street SE, Salem, Oregon.

APPEARANCES:

Staff:	Aaron Panko, Planner III
Neighborhood Association:	Southeast Salem Neighborhood Association (SESNA) (Appeared by letter)
Proponents:	Keith Wisenhunt, for the applicant
Opponents:	Ron Sterba; Nicholas Coffey; Debra Williams

SUMMARY OF THE APPLICATION AND HEARING

The applicant is requesting a conditional use permit for the development of a 96-unit apartment complex for the subject property. The property is approximately 2.88 acres in size, zoned IC (Industrial Commercial), and located in the 1700-1800 block of 23rd Street SE, Salem, Oregon.

FINDINGS OF FACT AND CONCLUSIONS

1. In January 2012, the Hearings Officer approved the applicant's consolidated application for a Conditional Use/Type II Site Plan Review/Administrative Design Review request to develop a 96-unit multi-family use on the subject property. That decision was reviewed by the Salem City Council and they reversed the Hearings Officer's decision, citing the following concerns with the application:

    I) Compatibility of the proposed multi-family use with the surrounding industrial and commercial uses in the area;

ii) Pedestrian Accessibility;
iii) Lack of schools and parks in the immediate area;
iv) Concerns regarding a proposed access to Oxford Street SE; and
v) Concerns with the proposed multi-family use and the proximity to the Salem Municipal Airport and the City of Salem Shops facility.

2. The issues raised by the City Council give strong direction as to how the policy makers for the City view the various issues that have been raised regarding compatibility. The Hearings Officer previously concluded that pedestrian accessibility and/or lack of schools and parks in the immediate area was not an issue. However, the City Council raised the compatibility issue, which gave direction to the Hearings Officer as to the way that criterion should be evaluated for this application. The Hearings Officer defers to the City Council as the policy makers for the City and applies the criteria based upon the City Council's direction. If evidence is not submitted to show a difference between this application and the previous application, the Hearings Officer is bound by the City Council's interpretation of their policies.

3. The Salem Area Comprehensive Plan (SACP) map designates the subject property as "Industrial Commercial".

4. The property is zoned IC (Industrial Commercial). Multi-family uses are allowed in the IC zone with a conditional use permit. Therefore, this application is being processed as required by the Industrial Commercial zone.

5. The zoning of surrounding properties is as follows:

North: IC (Industrial Commercial)
South: IG (General Industrial) and 22nd and Electric Overlay Zone
East: IC (Industrial Commercial)
West: IC (Industrial Commercial) - across 23rd Street SE;

6. SESNA has raised several concerns that the Hearings Officer will specifically address. The responses to these issues also apply to the conditional use criteria that will be set forth in the latter part of this Order.

The following is a summary of the objections raised by SESNA:

a) The proposed use is too large for the property.

The proposed multi-family use includes 96 dwelling units within six (6) individual buildings, each three (3) stories in height. The proposed dwelling unit density for the property is approximately 33 units per acre, which exceeds the dwelling unit density of the RMII (Multi-Family Residential) zone; it allows a maximum of 28 dwelling units per acre. However, because this property is zoned IC (Industrial Commercial), there is no maximum density requirement for multi-family use. The maximum height allowance in the IC zone is 70 feet, so this proposal meets both of these criteria.

b) There is a lack of urban amenities in the area (including a park).

There are nearby shopping services and employment opportunities for the subject property, and there are public parks within walking distance. This criterion was determined to be satisfied in the previous hearing on this matter. However, based upon the concerns raised by the City Council when they took this matter up on appeal, and the fact that nothing has changed with regards to the location of the park and shopping services, the Hearings Officer finds this has not been adequately addressed and will be specifically addressed when the Conditional Use Criteria are addressed.

c) Concerns with the traffic impacts such as the inability to turn left onto Mission Street and the difficulty accessing westbound transit.

Based upon the testimony of the Public Works Department, no changes to the 22nd and Mission intersection are recommended for this proposed development. As noted by SESNA, there is no left-hand turn allowed at this intersection. Westbound persons are not required to find an alternative route.

d) The area is not suited to residential use.

An analysis of the compatibility of the proposed use with the surrounding neighborhood is included later in this Order under the Conditional Use Criteria. In summary, based upon Staff testimony, and the interpretation by the City Council in the appeal in 2012, the applicant has not demonstrated how this application addresses the concerns regarding the suitability for residential use and impact on surrounding properties.

e) Issues with airport compatibility

The Hearings Officer has determined that the development is not compatible with the nearby airport. If this was an outright permitted use, compatibility would not be an issue. However, compatibility must be addressed as one of the conditional use criteria that the City Council adopted. Based upon the testimony from the Salem Municipal Airport Manager, and the written letter from the Oregon Department of Aviation, the Hearings Officer finds that this dense a development is not compatible with the nearby airport. The applicant made credible points in their February 17, 2016, and March 2, 2016, letters; nevertheless, while the applicant states that by denying the request staff seems to be circumventing the process by making a policy decision, the Hearings Officer must conclude the opposite. By denying this request, the City staff and the Hearings Officer are implementing the direction the City Council took upon reviewing this matter on appeal. They set the policy. The Hearings Officer is bound by the City Council's interpretation of their own rules and therefore reverses the previous decision with regards to compatibility.

7. Conditional use criteria are found in SRC 240. SRC 240.005(a)(1) provides that no building, structure, or land will be used or developed for any use which is designated as a conditional use in the UDC unless a conditional use permit has been granted pursuant to this chapter. SRC 240.005(d) sets forth the applicable criteria:

Criterion 1:
The proposed use is allowed as a conditional use in the zone.

It is clear to the Hearings Officer that SRC Chapter 551 Table 551-1 provides that multi-family uses are allowed in the IC (Industrial Commercial) zone with a conditional use permit. This criterion is satisfied.

Criterion 2:
The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions.

In determining what adverse impacts may be likely, it is appropriate to determine if the multi-family use is consistent with the goals and policies of the Salem Area Comprehensive Plan for multi-family residential development and siting. The applicable policies are:

Residential development (SACP IV, Section E)

Establishing Residential Uses.
The location and density of residential uses shall be determined after considering the proximity to services. Such services include, but are not limited to: shopping, employment, entertainment, parks, religious institutions, schools, and municipal services.

Relative proximity shall be determined by distance, access, and ability to provide services to the site. In addition, multi-family development should be located in areas that provide walking, auto, or other transit connections to employment centers, shopping areas, transit service, parks, and public buildings.

It is the finding of the Hearings Officer that a multi-family use will likely have little impact on the surrounding higher intensity commercial industrial uses. However, the interpretations of the City Council based upon these provisions, provide the Hearings Officer with concerns that the uses in the surrounding area will potentially cause an adverse impact to those residing in the development if a conditional use permit is approved.

The subject property is directly across from the City of Salem Shops facility. During emergency operations, that facility is used 24 hours a day/7 days a week. The noise impacts from that facility, in addition to that of the airport operation, would subject future residents to increased noise impacts. Therefore, this criterion has not been satisfied.

Criterion 3.
The proposed use will be reasonably compatible with, and have minimal impact on, the livability or appropriate development of the surrounding property.

The applicant made a compelling argument that the staff was reversing the criterion by finding that the surrounding uses were not compatible with the proposed use whereas the criterion states that the proposed use must be compatible and cause minimal impact on the surrounding uses. The property is zoned Industrial Commercial. Had this been a request for an outright permitted use, compatibility would not have been an issue. This is a *conditional use* and the City Council, on the appeal, gave specific indications that compatibility of this use with the surrounding uses was of serious concern. The Hearings Officer and the staff are not in a position to determine policy; the Hearings Officer's responsibility is to apply the policy maker's interpretation of their codes to the evidence presented. In this particular situation, because there has been no change

in the surrounding zoning of the properties and no significant changes in the uses of the surrounding properties between 2012 and today, the concerns leading the City Council to reverse the Hearings Officer's 2012 decision have not been adequately addressed. Compatibility issues regarding pedestrian accessibility, lack of schools and parks in the immediate area remain the same; no additional evidence was submitted to overcome these obstacles. Therefore, the Hearings Officer is compelled to deny the application as not meeting the applicable criteria.

8. There are serious issues raised regarding the noise impacts from the Salem Municipal Airport and the City of Salem Shops facility. The Salem Municipal Airport submitted testimony that the proposed multi-family use is not a compatible land use near an airport and does not conform to State and Federal guidance on land use around airports. The evidence is such that the application does not adequately address these concerns. Therefore, the Hearings Officer finds that the impact of the Salem Municipal Airport and the City of Salem Shops facility make this incompatible.

Based upon the foregoing, the Hearings Officer makes the following:

DECISION

The Hearings Officer DENIES the request for a conditional use permit to allow development of a 96-unit apartment complex, for property located in the 1700-1800 block of 23rd Street SE, Salem, Oregon.

DATED: March 8, 2016.

Scott A. Fewel, Hearings Officer