

FOR COMMISSION MEETING OF: April 19, 2016
AGENDA ITEM NO.: 6.2

TO: PLANNING COMMISSION

FROM: LISA ANDERSON-OGILVIE, AICP, PLANNING ADMINISTRATOR

**SUBJECT: APPEAL OF HEARINGS OFFICER'S DECISION DENYING CONDITIONAL
USE CASE NO. CU16-01 FOR PROPERTY LOCATED IN THE 1700-1800
BLOCK OF 23RD STREET SE**

ISSUE

Should the Planning Commission affirm, modify, or reverse the Hearings Officer's denial of a Conditional Use Permit Case No. CU16-01 to allow development of a 96-unit apartment complex, for property approximately 2.88 acres in size and zoned IC (Industrial Commercial)?

RECOMMENDATION

Affirm the Hearings Officer's denial of a Conditional Use Permit Case No. CU16-01 to allow development of a 96-unit apartment complex, for property approximately 2.88 acres in size and zoned IC (Industrial Commercial).

BACKGROUND

The subject property is located in the 1700-1800 Block of 23rd Street SE, a vicinity map showing the subject property is included as Attachment 1.

On December 15, 2015, a conditional use permit application was submitted to allow the development of a 96-unit apartment complex for the subject property, similar to two previous applications requesting to develop the subject property with a multi-family use. The two previous attempts were withdrawn by the applicant before a final decision was issued.

A public hearing before the hearings office was held on February 10, 2016. Following the hearing, the written record was held open for all parties to submit additional evidence. On March 8, 2016, the Hearings Officer issued a decision denying the Conditional Use Permit. An appeal of the decision was filed by the applicant. On March 28, 2016, the City Council did not elect to review the appeal; therefore, the review authority will be the Planning Commission.

The public hearing for an Appeal of the Hearings Officer's decision will be held before the Salem Planning Commission on April 19, 2016, at 5:30 p.m. in the Salem City Council Chambers, Civic Center Room 240, located at 555 Liberty Street SE. Notice of public hearing was sent on March 30, 2016 to surrounding property owners, the neighborhood association, individuals who submitted testimony for the record, and all others entitled to notice pursuant to Salem Revised Code (SRC) requirements. Public hearing notice was also posted on the property pursuant to SRC requirements.

FACTS AND FINDINGS

Procedural Findings

1. On December 15, 2015, a conditional use permit application was submitted to allow the development of a 96-unit apartment complex for the subject property, similar to the original request submitted in 2012. Site Plan Review and Design Review applications have not been submitted at this time. The application was deemed complete for processing on January 14, 2016. The staff report for the February 10, 2016 hearing before the Hearings Officer is included as Attachment 2.
2. On March 8, 2016, following the public hearing, the Hearings Officer issued a decision denying the Conditional Use Permit (Attachment 3).
3. On March 23, 2016, the applicant filed a timely appeal of the decision (Attachment 4). A public hearing before the Planning Commission is scheduled for April 19, 2016.
4. On March 30, 2016, notice of public hearing on the appeal was sent to the appellants, property owners, the neighborhood association, and owners of surrounding property pursuant to SRC requirements. Notice of the appeal hearing was also posted on the subject property on April 8, 2016.
5. The procedure for the appeal is specified in SRC 300.1040. The Planning Commission may affirm or reverse the decision, or may remand the matter to the Hearings Officer for further action.

Substantive Findings

6. The applicable criteria that must be satisfied in connection with the approval of a Conditional Use Permit are set forth under SRC 240.005(d).

SRC 240.005(d) provides:

An application for conditional use permit shall be granted if all of the following criteria are met:

- (1) *The proposed use is allowed as a conditional use in the zone;*
 - (2) *The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions; and*
 - (3) *The proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property.*
7. In 2012, The City Council voted to deny a similar proposal to develop the subject property with a multi-family use. City Council cited the following concerns with the application:
 - a. Compatibility of the proposed multi-family use with the surrounding industrial and commercial uses in the area;

- b. Pedestrian Accessibility;
- c. Lack of schools and parks in the immediate area;
- d. Concerns regarding a proposed access to Oxford Street SE; and
- e. Concerns with the proposed multi-family use and the proximity to the Salem Municipal Airport and the City of Salem Shops facility.

The Hearings Officer indicated that the issues raised by City Council give strong direction as to how the policy makers for the City view the various issues that have been raised regarding compatibility of the proposed apartment complex.

The Hearings Officer found that the applicant had not provided evidence to demonstrate a difference between this application and the previous application that Council denied, and therefore denied the Conditional Use Permit.

8. The March 23, 2016 appeal letter indicates that the applicant has demonstrated compliance with the approval criteria for a Conditional Use Permit, and based on this the denial is being appealed. The applicant indicated that additional information will be provided at the public hearing. No additional information was made available for staff to respond to prior to the appeal hearing.
9. Based on the facts and findings presented above, and included within the February 10, 2016 staff report to the Hearings Officer and the March 10, 2016 Hearings Officer decision, staff recommends that the Planning Commission affirm the Hearings Officer's decision to deny the Conditional Use Permit.
10. If the Planning Commission decides to reverse the decision of the Hearings Officer and grant the Conditional Use permit, staff recommends the following conditions of approval which are similar to conditions adopted by the Hearings Officer in the 2012 application to help mitigate the noise impact of the surrounding neighborhood on residents. In addition, staff recommends a condition requiring all significant trees to be preserved and protected throughout construction.

Condition 1: At the time of building permit review, the applicant shall provide an acoustical analysis, by a qualified acoustical engineer, of the proposed development, and incorporate into the design of the site and buildings, methods outlined in the analysis for reducing sound levels from surrounding uses to achieve an indoor noise level equal to or less than 55 Ldn.

Condition 2: The applicant shall incorporate a disclaimer into their tenant lease agreements that excessive noise is possible based on surrounding uses.

Condition 3: All significant trees on the subject property shall be preserved and protected through construction.

ALTERNATIVES

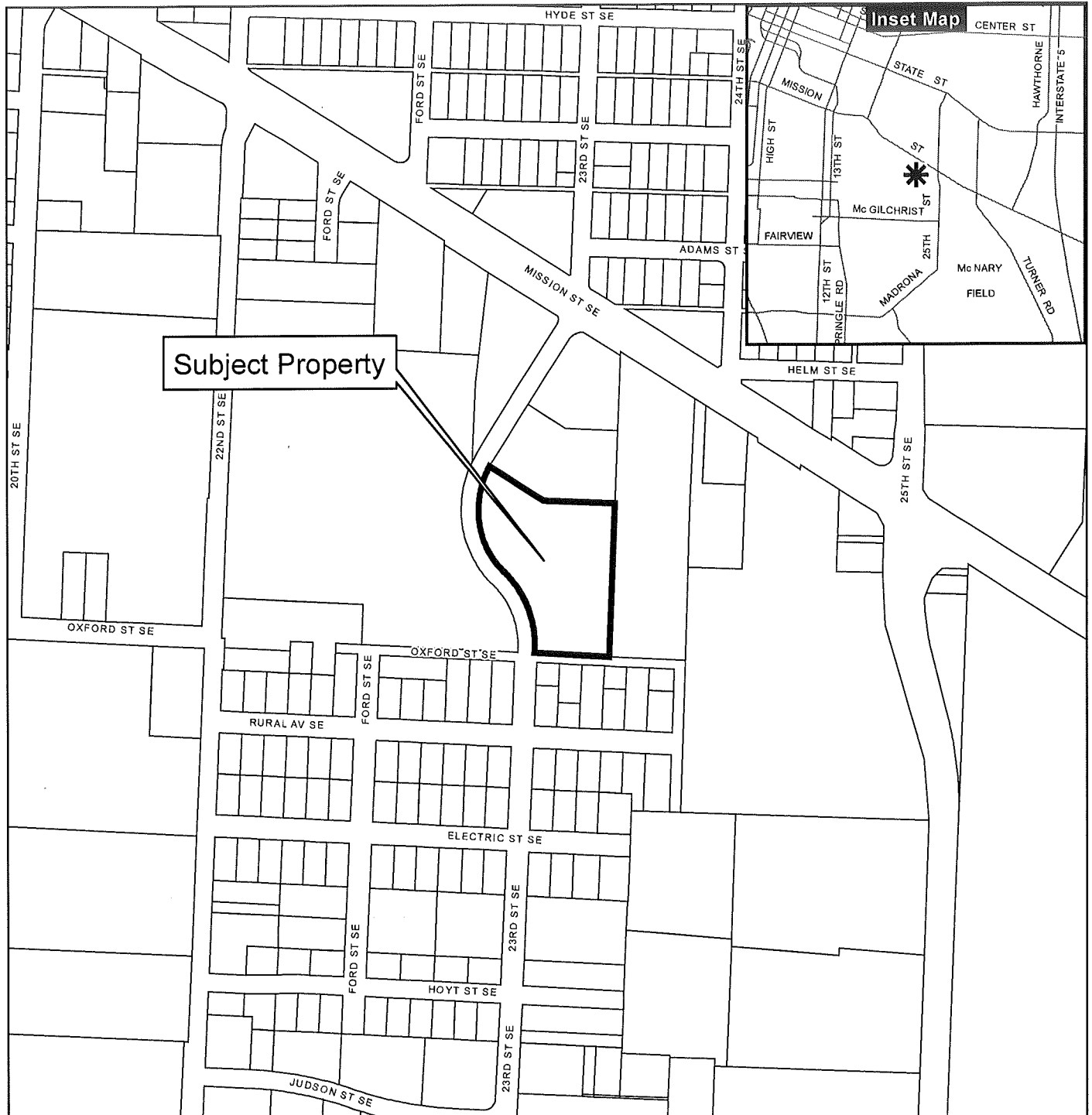
The Planning Commission may take one of the following actions:

- I. **AFFIRM** the March 8, 2016 decision denying CU16-01.
- II. **REMAND** the March 8, 2016 decision denying CU16-01 to the Hearings Officer for further action.
- III. **REVERSE** the March 8, 2016 denial, and grant approval for CU16-01.

Attachments: 1. Vicinity Map
2. Staff Report for the February 10, 2016 Public Hearing
3. Hearing's Officer Decision on Case No. CU16-01, dated March 8, 2016
4. Notice of Appeal filed by Applicant

Prepared by Aaron Panko, Planner III 

Vicinity Map 1700-1800 Block of 23rd Street SE



Legend

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

Parks

CITY OF Salem
AT YOUR SERVICE
Community Development Dept.

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*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:	<u>January 14, 2016</u>
Public Hearing Date:	<u>February 10, 2016</u>
Notice of Decision Mailing Date:	<u>March 8, 2016</u>
Decision Effective Date:	<u>March 24, 2016</u>
State Mandate Date:	<u>May 13, 2016</u>

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.

NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
FAX: 503-588-6005

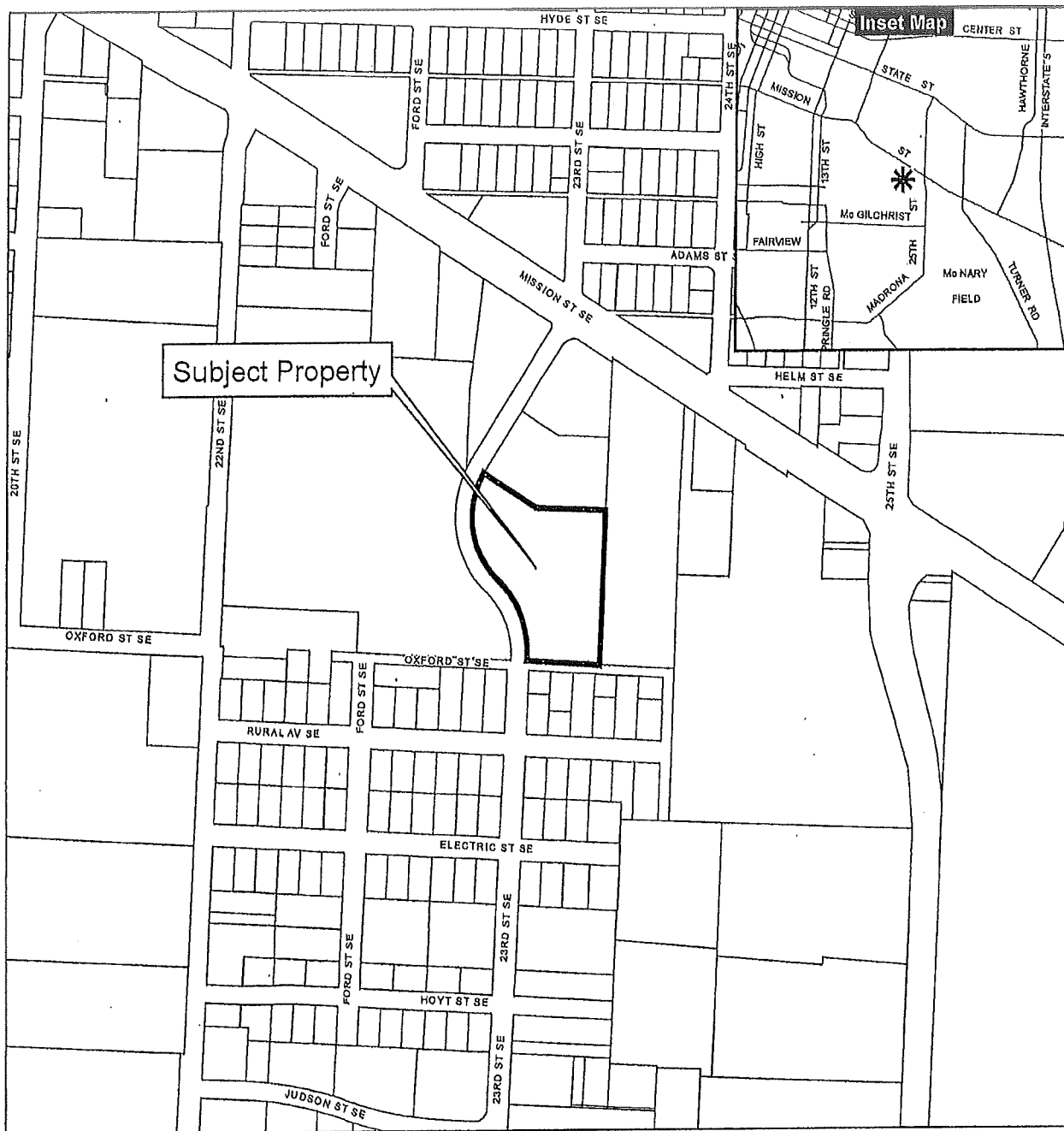
CITY OF *Salem*
AT YOUR SERVICE

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

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Community Development Dept.

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DATE: 2024.07

1252 23RD STREET SE

RUSHING MISSION STREET, LLC
 SALEM, OREGON

NO.	DESCRIPTION	DATE	BY
1	PRELIMINARY	07/2024	JD
2	REVISED	07/2024	JD

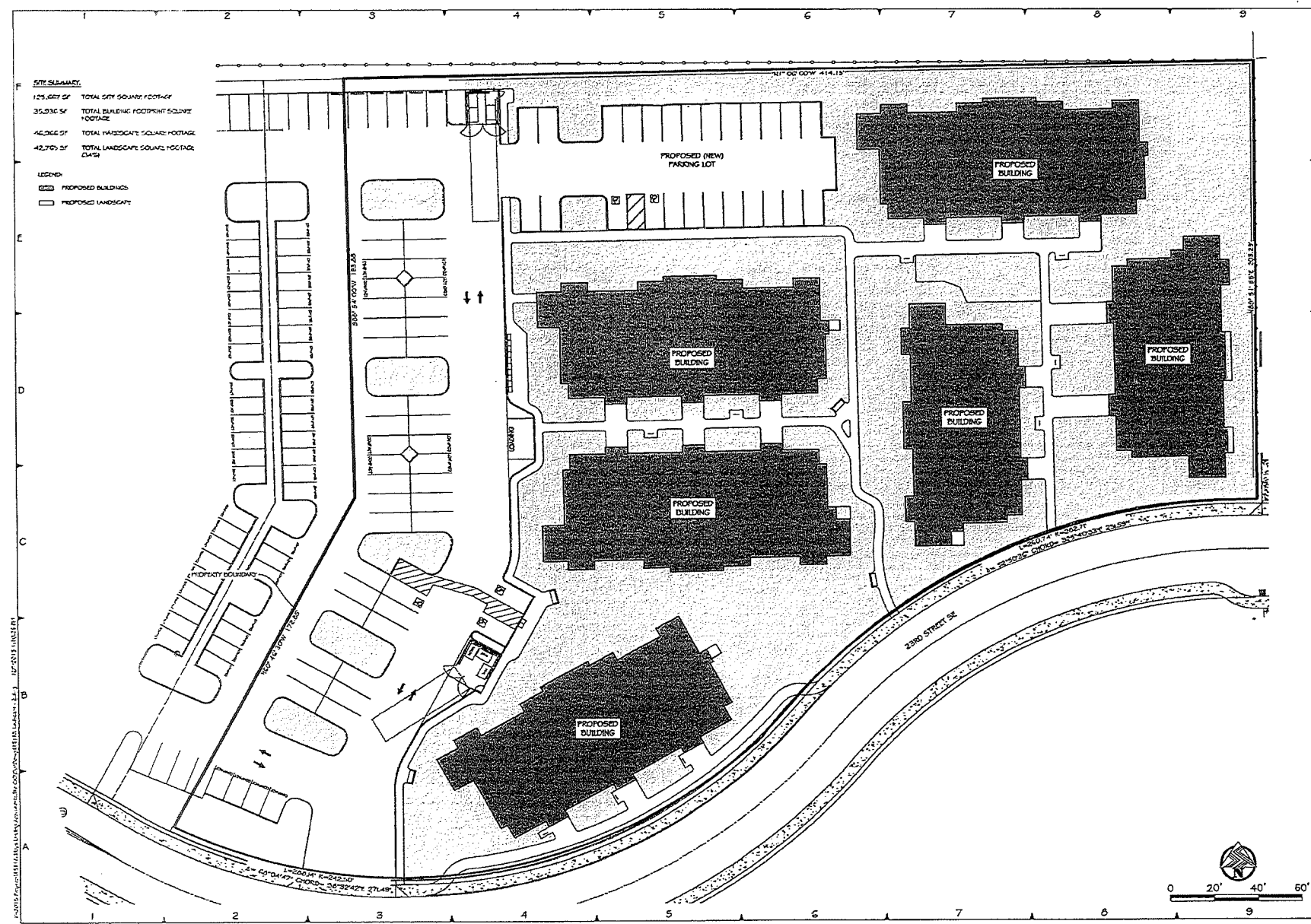
PROJECT NAME	1252 23RD STREET
OWNER	RUSHING MISSION STREET, LLC
DESIGNER	PROJECT DELIVERY GROUP
DATE	07/2024
SCALE	AS SHOWN
BY	JD
CHECKED BY	JD

APPROVED: _____

SHEET TITLE:

PROPOSED LANDSCAPING AREAS

L-1.01



**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

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

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.

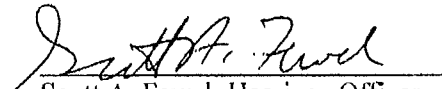
8. There are serious issues raised regarding the noise impacts from the Salem Municipal Airport and the City of Salem Shops facility. The Salem Municipal Airport submitted testimony that the proposed multi-family use is not a compatible land use near an airport and does not conform to State and Federal 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

Attachment 3

FOR MEETING OF: FEBRUARY 10, 2016
CASE NO.: CU16-01

TO: HEARINGS OFFICER

FROM: LISA ANDERSON-OGILVIE, AICP, ^①
PLANNING ADMINISTRATOR *LA*

SUBJECT: CONDITIONAL USE CASE NO. 16-01; 1700-1800 BLOCK OF 23RD
STREET SE; AMANDA NO. 15-121963-ZO

REQUEST

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 Assessor's Map and Tax Lot number: 073W35AD/ 00800).

OWNER/APPLICANT: Bo Rushing, Rushing Group

FILER: Brian Vinson, Project Delivery Group, LLC

RECOMMENDATION

Based upon the Facts and Findings contained in this staff report, staff recommends that the Hearings Officer DENY 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.

BACKGROUND

The subject property is located in the 1700-1800 Block of 23rd Street SE, a vicinity map showing the subject property is included as Attachment A.

In January of 2012, a consolidated application for a Conditional Use / Type II Site Plan Review / Administrative Design Review was submitted requesting to develop a 96-unit multi-family use on the subject property. The request was approved by the Hearings Officer subject to conditions of approval. The Hearings Officer decision was called up for review by the City Council.

In August of 2012, City Council voted to reverse the Hearings Officer's decision citing the following concerns with the application:

- 1) Compatibility of the proposed multi-family use with the surrounding industrial and commercial uses in the area;
- 2) Pedestrian Accessibility;
- 3) Lack of schools and parks in the immediate area;
- 4) Concerns regarding a proposed access to Oxford Street SE; and

- 5) Concerns with the proposed multi-family use and the proximity to the Salem Municipal Airport and City of Salem shops facility.

Before City Council could adopt a final order reversing the decision of the Hearings Officer, the applicant withdrew the consolidated application.

In March of 2013, a consolidated application was reviewed for a Conditional Use / Type II Site Plan Review / Administrative Design Review for a 54 dwelling unit multi-family complex and an office building approximately 7,500 square feet in size. The request was different from the 2012 proposal because of the reduction to the number of dwelling units and the inclusion of a commercial office use. A staff report was issued recommending denial of the application. The application was withdrawn prior to the August 14, 2013 public hearing before the Hearings Officer.

On December 15, 2015, a conditional use permit application was submitted to allow the development of a 96-unit apartment complex for the subject property, similar to the original request submitted in 2012. Site Plan Review and Design Review applications have not been submitted at this time. The application was deemed complete for processing on January 14, 2016.

The public hearing before the City of Salem Hearings Officer is scheduled for February 10, 2016, at 5:30 p.m. in the Salem City Council Chambers, Civic Center Room 240, located at 555 Liberty Street SE. Notice of public hearing was sent by mail to surrounding property owners pursuant to Salem Revised Code (SRC) requirements on January 21, 2016. Public hearing notice was also posted on the property by the applicant pursuant to SRC requirements.

PROPOSAL

The applicant is requesting a conditional use permit to allow a multi-family residential development with approximately 96 dwelling units on the subject property. The applicant's conceptual site plan for the proposed development is included as Attachment B.

The final design and features may result in changes to the conceptual site plan, which will be reviewed at the time of a future Site Plan Review application.

APPLICANT'S STATEMENT

The applicant's statement addressing the applicable approval criteria for the conditional use permit request is included as Attachment C.

FACTS AND FINDINGS

1. **Salem Area Comprehensive Plan (SACP) designation**

The Salem Area Comprehensive Plan (SACP) map designation for the subject property is "Industrial Commercial". The subject property is within the Urban Growth Boundary and the Urban Service Area.

2. Zoning and Surrounding Land Uses

The subject property is zoned IC (Industrial Commercial). Multi-family uses are allowed in the IC zone with a conditional use permit.

The zoning and uses of surrounding properties includes:

North: IC (Industrial Commercial) – Retail, Personal Service, and Eating and Drinking Uses
East: IC (Industrial Commercial) – Tire and Vehicle Repair Service
South: IG (General Industrial) and 22nd and Electric Overlay Zone – Single-Family Dwellings, light industrial uses
West: Across 23rd Street SE, IC (Industrial Commercial); City of Salem Shops Facility

3. Site Analysis

The subject property is approximately 2.9 acres in size and is currently vacant.

The subject property abuts 23rd Street SE to the west, which is designated as a collector street within the Salem TSP (Transportation System Plan). The property also has frontage on Oxford Street SE to the south. Access for the proposed development will come from 23rd Street SE.

Property directly to the north is under common ownership and is developed with a mix of uses including retail, personal services, and eating and drinking establishments. The site plan shows a parking area separating the existing commercial uses from the proposed residential complex.

Natural Resources

SRC 808 - Preservation of Trees and Vegetation: The City's tree preservation ordinance, under SRC Chapter 808, provides that no person shall remove a significant tree (Oregon White Oak greater than 24 inches in diameter at breast height) (SRC 808.015) or a tree or native vegetation in a riparian corridor (SRC 808.020), unless the removal is excepted under SRC 808.030(a)(2), undertaken pursuant to a permit issued under SRC 808.030(d), undertaken pursuant to a tree conservation plan approved under SRC 808.035, or permitted by a variance granted under SRC 808.045.

Significant trees are present on the property; all significant trees should be protected and preserved to the greatest extent possible. Approval of a Conditional Use Permit does not authorize removal of significant trees.

SRC 809 - Wetlands: Grading and construction activities within wetlands are regulated by the Oregon Department of State Lands (DSL) and US Army Corps of Engineers. State and Federal wetlands laws are also administered by the DSL and Army Corps, and potential impacts to jurisdictional wetlands are addressed through application and enforcement of appropriate mitigation measures.

The Salem-Keizer Local Wetland Inventory (LWI) does not identify any wetland areas on the subject property, there are however hydric soils mapped on the property. The applicant should contact DSL to verify if any permits are required for development or construction in the vicinity of mapped hydric soils.

SRC 810 - Landslide Hazards: A geological assessment or report is required when regulated activity is proposed in a mapped landslide hazard area. There are no mapped landslide hazards on the subject property. The applicant's proposal does not appear to disturb any portion of a mapped landslide hazard area with regulated activities; therefore, a geological assessment is not required.

4. **Neighborhood and Citizen Comments**

The subject property is located within the Southeast Salem Neighborhood Association (SESNA). Notice was provided to SESNA and surrounding property owners within 250 feet of the subject property. Comments were received from SESNA indicating that the board was evenly split on whether or not to support the application (Attachment D).

The following is a summary of objections raised by SESNA.

- 1) The proposed use is too large for the property.

Staff Response: The proposed multi-family use includes 96 dwelling units within six individual buildings, each three 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 RM-II (Multi-Family Residential) zone, which allows a maximum of 28-dwelling units per acre. However, because the property is zoned IC (Industrial Commercial), there is no maximum density requirement for a multi-family use. The maximum height allowance development in the IC zone is 70 feet, which the proposed buildings do not exceed.

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

Staff Response: An analysis of the urban amenities in the area is included in Section 6 of this report. In summary, there are nearby shopping services and employment opportunities to the subject property and there are public parks within walking distance.

- 3) Concerns with traffic impact, such as the inability to left turn onto Mission Street and difficulty accessing westbound transit.

Staff Response: The Public Works Department has reviewed the Conditional Use Permit application and does not recommend any changes to the 22nd and Mission intersection with this proposed development. As noted by SESNA, there is no left hand turn allowed at the intersection of 22nd and Mission, westbound persons are required to find an alternative route.

- 4) The area is not suited to residential use.

Staff Response: An analysis of the compatibility of the proposed use with the surrounding neighborhood is included in Section 6 of this report. In summary, staff finds that the applicant has not demonstrated how this application addresses the concerns and issues raised by the City Council in 2012, how the proposed use is reasonably compatible with surrounding property, or how the proposed use will have minimal impact on the surrounding property.

- 5) Issues with airport compatibility.

Staff Response: An analysis of the compatibility of the proposed use with the airport is included in Section 6 of this report, in addition the Salem Municipal Airport has commented that the proposed development plan is similar to previous plans to develop this site which the airport has objected to and that the issues and objections from an airport perspective remain the same.

Six comments were received from surrounding property owners expressing objections to the applicant's proposal, some indicating similar concerns as SESNA. The following additional concern is noted.

- 1) A comment was received from a neighboring property owner whose land is subject to recorded CC&R's which also includes the subject property and impact maintenance of common areas that serves the existing commercial/retail uses.

Staff Response: SRC 110.060(a) provides that the Unified Development Code shall be applied independently of, and without regard to, any private easement, covenant, condition, restriction, or other legally enforceable interest in, or obligation imposed on, the use or development of land. As such, the City cannot consider the terms of the private CC&R's in this decision.

5. City Department and Public Agency Comments

The Fire Department has reviewed the proposal and indicated they have no comments for the Conditional Use Permit application. Access, fire flow, and fire hydrant locations shall be provided in accordance with the Salem Fire Prevention Code (SRC 58) and will be reviewed during the building permit application.

The Public Works Department and Building and Safety Division have reviewed the proposal and indicated that they have no comments for the Conditional Use Permit application.

Salem-Keizer School District has reviewed the proposal and provided comments included as Attachment E.

The Salem Municipal Airport has reviewed the proposal and provided a response objecting to the proposed use. Full comments from the Airport are included as Attachment F.

6. Analysis of Conditional Use Criteria

SRC Chapter 240.005(a)(1) provides that:

No building, structure, or land shall 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 Chapter 240.005(d) establishes the following approval criteria for a conditional use permit:

Criterion 1:

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

Staff Finding: SRC Chapter 551, Table 551-1 provides that multi-family uses are allowed in the IC (Industrial Commercial) zone with a conditional use permit.

Criterion 2:

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

Applicant's Statement: The complete written statement from the applicant addressing the conditional use approval criteria is included as Attachment C.

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

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 and entertainment opportunities, parks, religious institutions, schools and municipal services. Relative proximity shall be determined by distance, access, and ability to provide services to the site.

Multi-Family Housing.

Multiple family developments should be located in areas that provide walking, auto or transit connections to:

- 1) Employment Center
- 2) Shopping Areas
- 3) Transit Service
- 4) Parks
- 5) Public Buildings

Finding: The subject property has frontage and a direct route to Mission Street SE, which is designated as a Parkway in the Salem Transportation System Plan. Mission Street provides a pedestrian, bike and vehicle connection from the subject property to nearby services, including grocery stores and shopping areas. Salem-Keizer Transit (Cherriots) provides a transit route that passes by the subject property (Routes 6 and 7).

The subject property is approximately 0.55 miles away from the nearest public park, Lee Park to the northwest of the subject property. In addition, Cascades Gateway Park is located approximately 1.25 miles from the subject property.

Bush Elementary School, Leslie Middle School and South Salem High School will serve students in this area, but the subject property is located outside the walk zone for each of these schools. Students will be eligible for transit.

The proposed multi-family use for the subject property is consistent with the goals and policies of the Salem Area Comprehensive Plan for multi-family residential development and siting.

A multi-family use will likely have little to no impact on the surrounding higher intensity commercial and industrial uses; rather the uses in the surrounding area will potentially cause an adverse impact for those residing in this development if the Conditional Use Permit is approved. The subject property is directly across from the City of Salem Shops facility. During emergency operations the facility is used 24 hours a day, 7 days a week, residents could be subjected to increased noise impacts. In addition, noise from airport operations could cause a significant impact to future residents.

If the Hearings Officer decides to approve the Conditional Use Permit, staff recommends that the Hearings Officer adopt conditions of approval to help mitigate the potential noise impacts of the surrounding area on future residents.

Criterion 3:

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

Applicant's Statement: The complete written statement from the applicant addressing the conditional use approval criteria is included as Attachment C.

Staff Finding: Two similar Conditional Use Permits have been requested to develop the subject property with a multi-family use; both cases were withdrawn by the applicant before a final decision was issued. At the August 27, 2012 hearing before the City Council, the Council voted to reverse the Hearings Officer's decision approving CU-SPR-ADR12-05 citing the following concerns for the proposed development:

- Compatibility of the proposed multi-family use with the surrounding industrial and commercial uses in the area;
- Pedestrian Accessibility;
- Lack of schools and parks in the immediate area;
- Concerns regarding a proposed access to Oxford Street SE; and
- Concerns regarding noise impacts from the Salem Municipal Airport and City of Salem Shops Facility.

With this current Conditional Use Permit request, staff has asked the applicant to demonstrate how this new application addresses each of the concerns raised by the City Council during the 2012 hearing.

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

Finding: The subject property is zoned IC (Industrial Commercial) and is surrounded by a variety of commercial and industrial uses including the City of Salem Shops facility directly to the west. To the south is an area that is zoned IG (General Industrial) that includes a mix of light industrial and residential uses.

There has been no change in the zoning of surrounding properties and no significant change to the uses of surrounding properties between 2012 and today.

Previous versions of the proposed multi-family development required off-street parking spaces to be shared between the multi-family use, the abutting commercial development to the north, and the commercial development across 23rd Street SE. A concern was raised by Council that the lack of off-street parking spaces may require people to cross 23rd Street SE in order to find a parking space.

One notable change has been the adoption of new off-street parking requirements for commercial development. The new parking requirements have the effect of requiring fewer parking spaces for the commercial development, and

with this plan in particular, there is no longer a need to utilize parking spaces from the commercial development across 23rd Street SE in order to meet minimum off-street parking requirements, thereby eliminating this concern.

2) Pedestrian Accessibility.

Finding: 23rd Street SE is currently developed with sidewalks which connect to Mission Street SE. There is a Cherriots transit stop at the corner of 23rd Street and Mission Street near Popeye's. Mission Street provides east-west pedestrian accessibility. There are two crosswalks on Mission Street near the subject property at the intersection of 22nd Street and at the intersection with 25th Street. There is not a signalized crosswalk on 23rd Street SE.

While this site does provide options for pedestrian and transit accessibility, staff does not identify any notable changes to the pedestrian system between 2012 and today.

3) Lack of schools and parks in the immediate area.

Finding: Salem Keizer School District has reviewed the proposal and commented that the subject property is within the boundaries of Bush Elementary School, Leslie Middle School, and South Salem High School. The subject property is outside the walk zone for each of these schools and is eligible for transportation.

Lee Park, located at the intersection of 22nd Street SE and Lee Street SE, is the closest City Park to the subject property. The park is approximately 0.55 miles from the subject property. Pedestrian access to the park is provided along existing sidewalks, with a crosswalk at the intersection of 22nd Street SE and Mission Street SE that may be used by pedestrians to cross Mission Street.

Cascades Gateway Park is located near Lowes, Wal-Mart and Interstate 5, which is approximately 1.25 miles east of the subject property along Mission Street SE. There are existing sidewalks and protected crosswalks along the pedestrian route to this park.

There have been no notable changes to the location or accessibility of the parks or schools in the vicinity of the subject property between 2012 and today.

4) Concerns regarding a proposed access to Oxford Street SE.

Finding: The first application showed a parking area near the south side of the property with direct access to Oxford Street proposed. The conceptual site plan submitted with this application does not show an access point onto Oxford Street SE, therefore this concern has been addressed.

5) Concerns regarding noise impacts from the Salem Municipal Airport and City

of Salem Shops Facility.

Finding: Proximity of the development to the Airport, which is located within the Airport Overlay Zone, can be seen in Attachment G. The surfaces depicted in the map set forth height limitations applicable to development near the airport. More information about the zones depicted in the map can be found in SRC Chapter 602.

Comments were received from the Salem Municipal Airport which indicates that the issues from the Airport's perspective remain the same as in previous correspondence for similar proposals.

The Airport indicates that the property is within the 55-64 DNL noise range and will subject residents to "moderate" noise exposure from normal air traffic. Noise-sensitive properties are defined as "real property normally used for sleeping, or normally used for schools, churches, hospitals or public libraries." This proposal places noise sensitive residential properties immediately under the departure and final approach to the airport's primary instrument runway, subjecting residents to significant noise impacts.

The FAA considers residential development adjacent to, or in the immediate vicinity of, an airport as an incompatible land use. This development proposal places 96 dwelling units approximately 1/2 mile from the airport's primary runway, within 450 feet of the Runway Protection Zone, and immediately beneath the approach path of the airport's primary runway. The Airport indicates that the FAA would likely consider this development an inappropriate use, and the City's specific permitting of it an inappropriate action in violation of Grant Assurance #21, potentially subjecting the City to civil penalties, repayment of past grants, and/or loss of future grant opportunities.

It is the Airport's position 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. As such, the Airport recommends denial of the Conditional Use Permit.

Staff finds that the applicant has not demonstrated how this application addresses the concerns and issues raised by the City Council in 2012, how the proposed use is reasonably compatible with surrounding property, or how the proposed use will have minimal impact on the surrounding property, and therefore recommends that the Hearings Officer deny the Conditional Use Permit.

RECOMMENDATION

Based upon the Facts and Findings contained in this staff report, staff recommends that the Hearings Officer DENY 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.

Prepared by Aaron Panko, Planner III



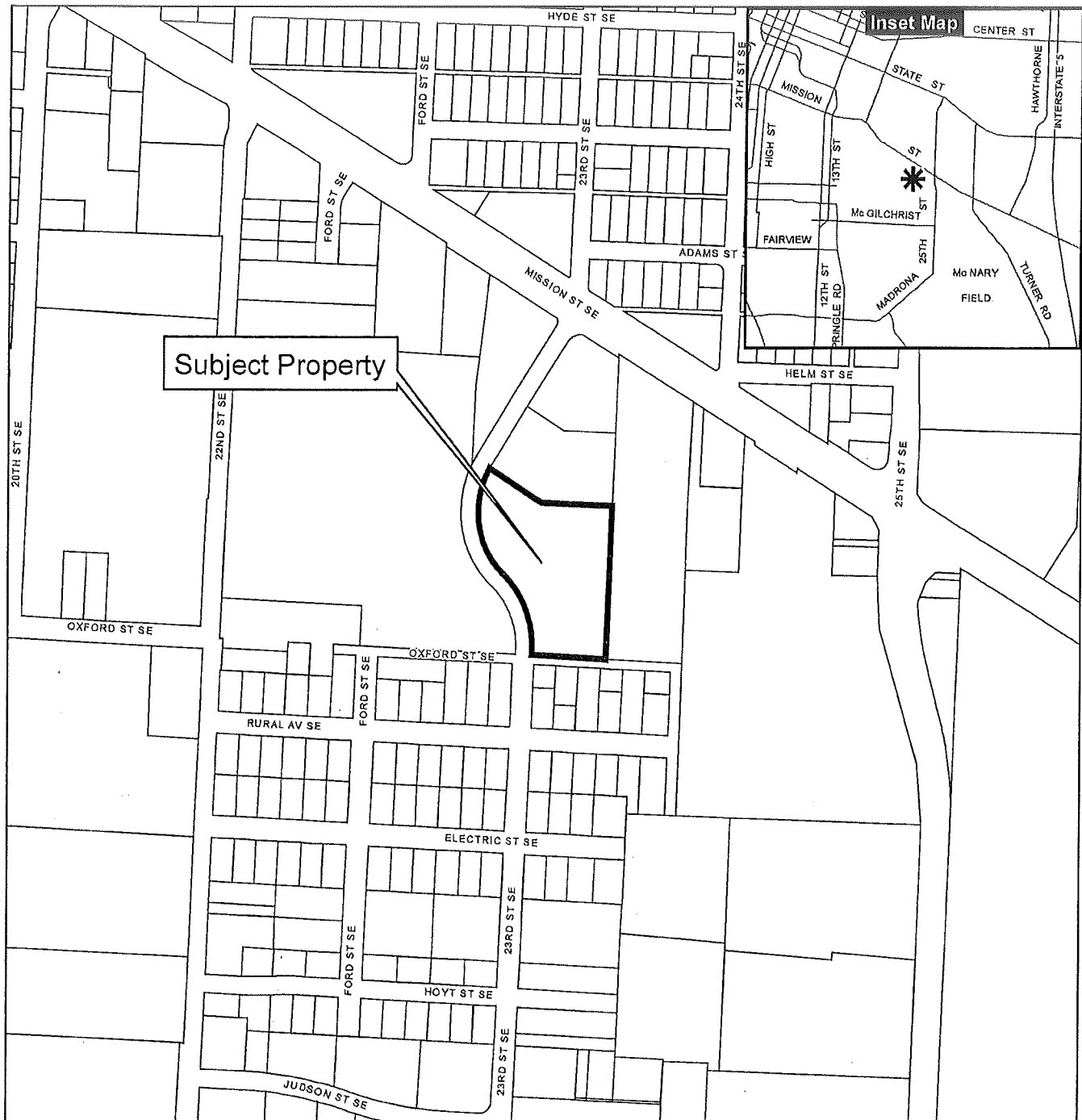
Application Deemed Complete Date: January 14, 2016
State Mandated Decision Date: May 13, 2016

- Attachments:
- A. Vicinity Map
 - B. Proposed Site Plan
 - C. Applicant's Statement
 - D. Response from SENSEA
 - E. Response from Salem Keizer School District
 - F. Response from Salem Municipal Airport
 - G. Airport Overlay Zone Map

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Decisions\CU16-01.amp.doc

Vicinity Map

1700-1800 Block of 23rd Street SE



Legend

Taxlots

Urban Growth Boundary

City Limits

Outside Salem City Limits

Historic District

Schools

Parks

CITY OF *Salem*
AT YOUR SERVICE
Community Development Dept.

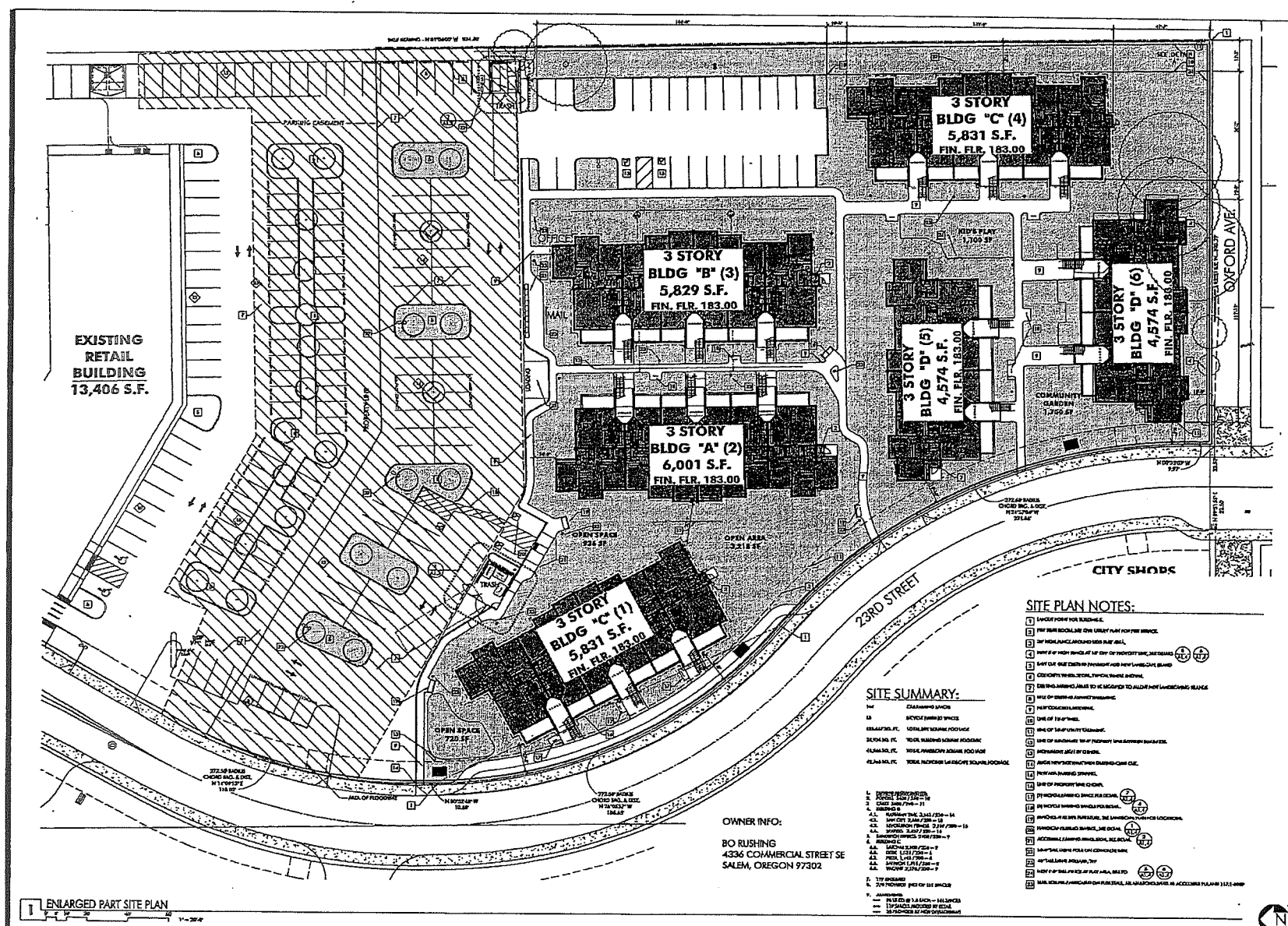
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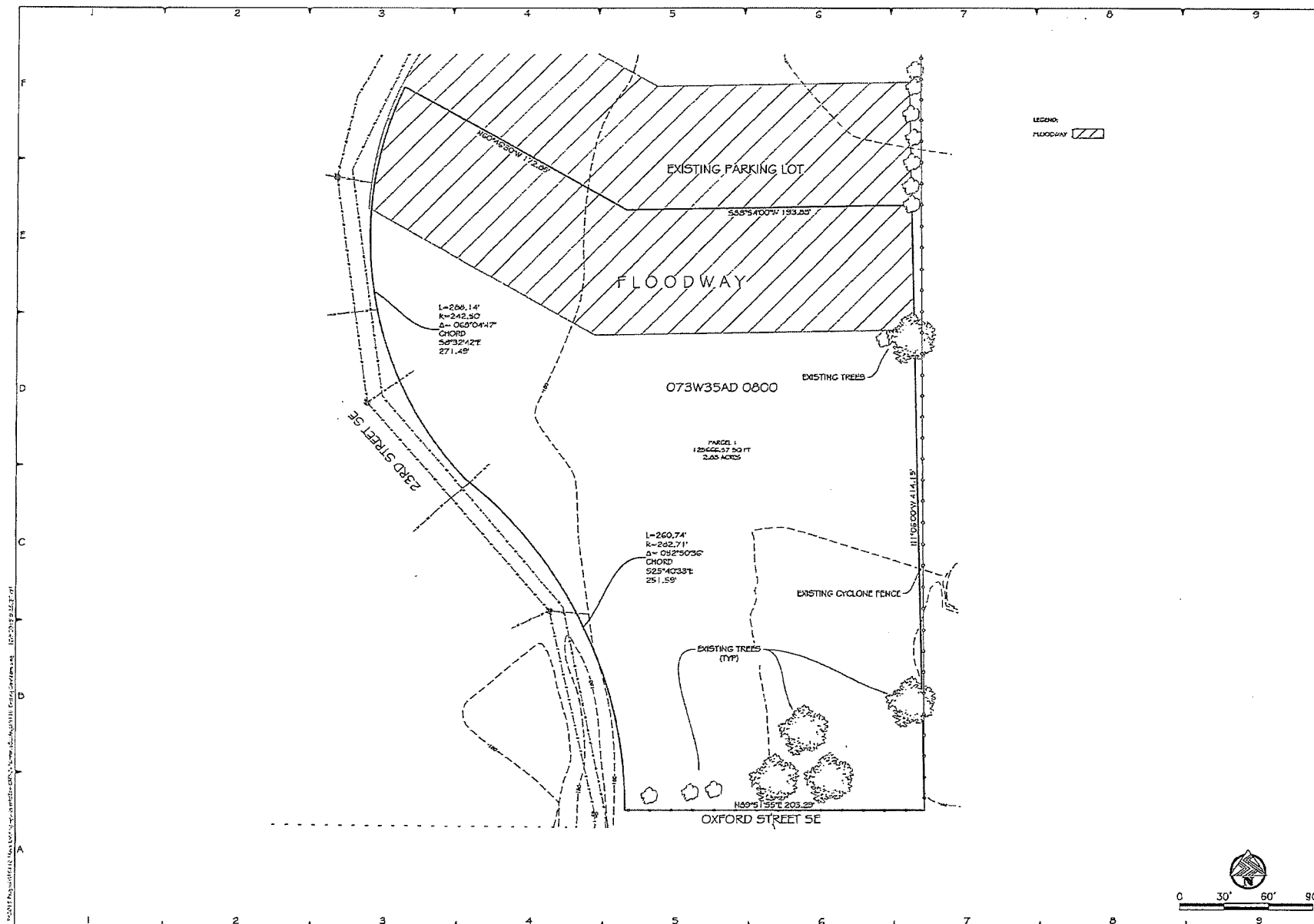


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MAY'S LANDING
1500 BLOCK OF 23RD ST SE SALEM, OREGON

A1.2





DATE: 04/20/2020

1252 23RD STREET SE

RISING MISSION
STREET, LLC

SALEM, OREGON

NO.	REVISION	DATE
1	ISSUED FOR PERMIT	04/20/2020

PROJECT NO.	19176
CLIENT	RISING MISSION STREET, LLC
DESIGNER	PROJECT DELIVERY GROUP
DATE	04/20/2020
PROJECT	1252 23RD STREET SE
SCALE	AS SHOWN
DATE	04/20/2020
BY	AS
CHECKED	AS
APPROVED	AS

DATE: 04/20/2020

EXISTING
CONDITIONS

C-1.01

ATTACHMENT C



December 7, 2015

Mr. Aaron Panko
City of Salem
Community Development Department
555 Liberty Street SE, Room 350
Salem, Oregon 97301

RE: MAYS LANDING CONDITIONAL USE APPLICATION – 1252 23rd Street SE

Dear Aaron,

This letter is intended to serve as a cover letter for the Conditional Use Application for the above referenced site. The "Subject Property" is located at 1252 23rd Street SE in Salem Oregon (Marion County Assessor's Map No. 073W35AD, Tax Lot 800). The total acreage of the Subject Property is 2.88 acres. The property is designated in the Salem Area Comprehensive Plan (SACP) as "Industrial/Commercial", and is zoned Industrial Commercial (IC).

The applicant wishes to request approval of a conditional use permit for the purposes of developing a 96-unit multi-family complex as indicated by Drawing A1.2 (enclosed). The complex will contain (6) 3-story apartment buildings, with a total of 17 units per building. The proposed development will also include additional parking to supplement the existing shared parking lot to the north, on-site playground, and substantial open space for landscaping.

Conditional Use Criteria:

The proposed use is allowed as a Conditional Use in the zone;

With a conditional use permit the proposed use for this site is allowed under the IC zone designation, and multi-family residential uses are allowed with an unlimited number of dwelling units. In order to provide for compatibility with the surrounding single family neighborhoods, the applicant in seeking approval for 96 dwelling units.

The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions;

The adverse impacts identified for this development include site access, pedestrian accessibility, noise, FAA safety hazards, land use compatibility, access to schools, transit, access to parks, and parking. These impacts are described below:

Site Access: The applicant proposes to establish primary access to the site on 23rd Street SE, which is designated as a collector street in the Salem Transportation System Plan. The property also has frontage along Oxford Street SE, which is currently only improved to alley standards. Therefore all access to the site is being proposed for 23rd Street SE, utilizing existing curb cuts, and restricting direct access to Oxford Street SE.

Pedestrian Accessibility: Pedestrian accessibility will be provided on-site as required by existing codes and standards. Additionally, the adjacent sidewalk along the development frontage will meet pedestrian accessibility requirements. If there are other needs identified by City staff, the applicant is open to discussing what those requirements may be.

Noise: The primary noise sources which will affect this development will originate from the City of Salem Operation and Maintenance Facility located off of 23rd Street SE to the west of the subject property, and the Salem Airport, where the closest runway is approximately 0.5 miles from the proposed buildings. According to the Oregon Department of Aviation Airport Land Use Compatibility Guidebook (ODA Guidebook), Table 1-1, the only potential impacts regarding proposed residential development are noise and safety. The Federal Aviation Administration (FAA), the Environmental Protection Agency (EPA), and the Department of Housing and Urban Development have established the 65 day-night average sound level (65 DNL) as a threshold for determination of significant noise impacts resulting from airport improvements. Exhibit #5 of the ODA Guidebook states that the 65 DNL and below is compatible with residential uses. According to the Salem Airport Master Plan (Exhibit 6-3), the proposed development exposure is below the 65 DNL. Therefore airport noise is not a concern for the proposed development. Regarding the City of Salem operations and maintenance facility, the noise expected from this site is also less than 65 decibels.

FAA Safety Hazards: As mentioned above, Table 1-1 of the ODA Guidebook states the only potential impacts regarding the proposed residential development are noise and safety. The property owner had an aeronautical study performed (enclosed), and the FAA determined that the proposed development will not exceed obstruction standards and will not be a hazard to air navigation. See attached FAA Determination letter.

It is also important to note that since its inception in 1929, the Salem Airport has had no crashes in the immediate area surrounding the airport.

Land Use Compatibility: Land use controls and implementation of compatible land uses through zoning exists to help provide protection for aircraft and people working and living near airports. While the FAA has no regulatory authority for controlling land

uses, they do provide guidance documents for local and state governments to aid in land use compatibility. It is important to keep in mind that this is simply guidance and not law. Two primary impacts identified by the FAA related to land use planning are noise and safety (height restrictions) concerns, which is indicated by Table 1-1: Land Use Troubleshooting Matrix of the DOA Guidebook. Each of these impacts for the proposed residential development are described above, and have been determined to be of little or no impact. While the FAA guidance for residential development is considered not compatible within the proximity of the airport, it should be noted that the FAA guidance considers many uses not to be compatible. Of the 120 uses identified in Table 6-1 of the ODA Guidebook, only 23 are considered "generally compatible" land uses. Therefore, based on noise and safety not being an issue with the proposed development, we feel the request for a conditional use approval should be granted.

Access to Schools: The schools serving this property are Bush Elementary, Leslie Middle, and South Salem High. According to the Salem-Keizer School District, the residences in the area are eligible for bus service to all schools serving the area in question. In fact, bus service currently serves the area. There is a walking route from the property to Bush Elementary, by way of 14th Street under Mission Street SE, eliminating the need to use surface crossings to walk to this school. The route is approximately 1.2 miles.

Transit: Public transit is available in close proximity to the subject property, with stops on Mission Street SE at 23rd Street SE, at 25th Street SE, and Ford Street SE. Outbound service can be accessed on the same side of Mission Street SE as the property. Inbound service can be accessed across the Mission Street SE via the crosswalks at 22nd Street SE and 25th Street SE.

Access to Parks: Lee City Park is located across Mission Street SE, off of Ford Street SE, approximately 0.50 miles from the subject property. Walling Pond, a privately owned property which is open to the public, is also located to the south of the subject property. The applicant will also be providing on-site open space and playground facilities as part of the multi-family development.

Parking: The minimum required parking for the multi-family portion of the development is 144 stalls. Between the 25 on-site parking stalls provided by the proposed development and the 119 excess parking spaces in the commercial parking lot to the north, all of the parking needs are taken care of. The proposal would be to create a parking easement on the lot to the north for use of the excess commercial parking stalls. These parking spaces would then be reserved/signed for the multi-family residential parking only.

With any of the impacts described above, conditions can be placed on the development which would minimize any identified impacts of concern. Therefore the conditional use request should be granted.

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

As the proposed development will be located in an area of industrial and commercial users, and lies adjacent to an area that is predominantly residential in nature, the only likely adverse impact would be to the users of the development and not the surrounding properties. Traffic is not anticipated to create issues as the development is adequately served by 23rd Street SE, Oxford Street SE, and Missions Street SE. Regarding aesthetics, the proposed development includes landscaping and parking areas to separate the proposed multi-family and from the existing commercial development to the north. Bufferyards will be implemented to separate the use from the moderate impact and auto service use to the east. The proposed development has also been reviewed for consistency with the development standards which provides design standards for multi-family development. The development standards will provide screening, setback, height, and mass regulations, which ensure compatible design with the surrounding uses.

The proposed development provides for pedestrian and bicycle connectivity to the public sidewalk and street system, and transit service is provided within 400 to 600 feet along Mission Street SE. Existing utilities are in 23rd Street SE and Oxford Street SE, and are adequate to serve the proposed development.

Permitting of multi-family development in an industrial zone allows for a variety of housing types in an area which may provide convenient pedestrian access to a variety of commercial and industrial services. Additionally, the proposed development will provide minimum standards for common open space, private open space, and children's play areas.

In summary, the proposed 96-unit multi-family development satisfies applicable Comprehensive Plan Goals and Policies Related to Mixed Use Development by providing a mixture of commercial and residential uses adjacent to an area where small industrial businesses exist or are expected to develop in the future.

Traffic Impact Analysis (TIA):

During the pre-application meeting, the City public works staff declared that a traffic impact analysis would not be required. Therefore no trip generation or TIA is provided with this conditional use application.

SESNA Neighborhood Approval:

Our client has discussed this development with the SESNA neighborhood association on several occasions to communicate the desire and need for this development, and also to gather input regarding neighborhood concerns. After recent discussions with the neighborhood, the SESNA board voted in support of the proposed multi-family development. Additionally, the Salem Housing Needs Analysis and the 2015 SESNA Neighborhood Plan both site how there is a deficit of land in the multi-family designation. The SESNA Plan identified the following objectives/goals:

- a) Goal 2, Housing Types Policy 2.1: The plan states that multi-family developments shall be encouraged in locations near transit services...
- b) Goal 2, Housing Types Policy 2.2: The plan states that development of affordable, workforce and mixed-income housing shall be encouraged to ensure housing options for people of all incomes.
- c) Goal 5, Action 5.1: The plan states that mixed-use developments should be located on or near transportation corridors.
- d) The plan indicates that mixed-use developments should be promoted because they preserve open space, reduce automobile dependency, and provide for alternative modes of transportation such as walking.

Based on the above objectives/goals, this development will provide for affordable housing that places people in a good position for accessing jobs and services in close proximity to their homes, and therefore allowing them to take advantage of alternative modes of transportation (e.g. bus, bicycle, and walking).

Site Plan:

Please reference the attached plan (A1.2).

Existing Conditions Plan:

Please reference the attached plan (C-1.01).

Existing Conditions Plan:

Please reference the attached plan (L-1.01).

Previous Land Use Action:

It should be noted that in 2012, the consolidated conditional use, site plan review, and administrative design review applications were reviewed and approved by City staff. At that time, staff recommended to the Hearings Officer that the application request be "GRANTED" for the 96-dwelling unit multi-family complex, with conditions. Those conditions, along with applicant responses, are indicated as follows:

- Condition 1: Construct the proposed development in accordance with provisions of SRC Chapter 140 based on base flood elevation of 181.0.
 - *Response: This condition will be complied with.*
- Condition 2: As a condition of building permit issuance, provide an engineered no-rise certification to demonstrate that development within the floodway does not cause a rise in flood levels.
 - *Response: This condition will be complied with.*
- Condition 3: At the time of building permit review, the applicant shall provide an acoustical analysis, by a qualified acoustical engineer, of the proposed development, and incorporate into the design of the site and buildings, methods outlined in the analysis for reducing sound levels from the surrounding uses.
 - *Response: Based on the information provided with this narrative/report, we do not believe a noise study is required. However, if the City requires it, the applicant will perform such a study, and will implement acoustical improvements if needed.*
- Condition 4: The applicant shall incorporate a disclaimer into their tenant lease agreements that excessive noise is possible based on surrounding uses.
 - *Response: The applicant will incorporate this language into the lease agreements if required. However, based on the information contained in this narrative/report, we do not feel this would be necessary.*
- Condition 5: The applicant shall revise the site plan to remove building "e". The building may be replaced with either open space, or may be replaced with two duplexes, but the number of dwelling units may not exceed 84 for the subject property.

- *Response: This application includes the same 96-unit layout as previously submitted.*
- Condition 6: Oxford Street SE shall be paved along the entire frontage of the subject property to meet alley standards. Prior to building permit issuance, construction plans shall be approved and secure per SRC Chapter 77. The improvements shall be completed by the applicant and approved by the Public Works Director.
- *Response: With this application the use of Oxford Street SE for access to the site has been deleted as requested per City staff. If the City wishes for Oxford Street SE to be improved for access, the applicant will comply.*


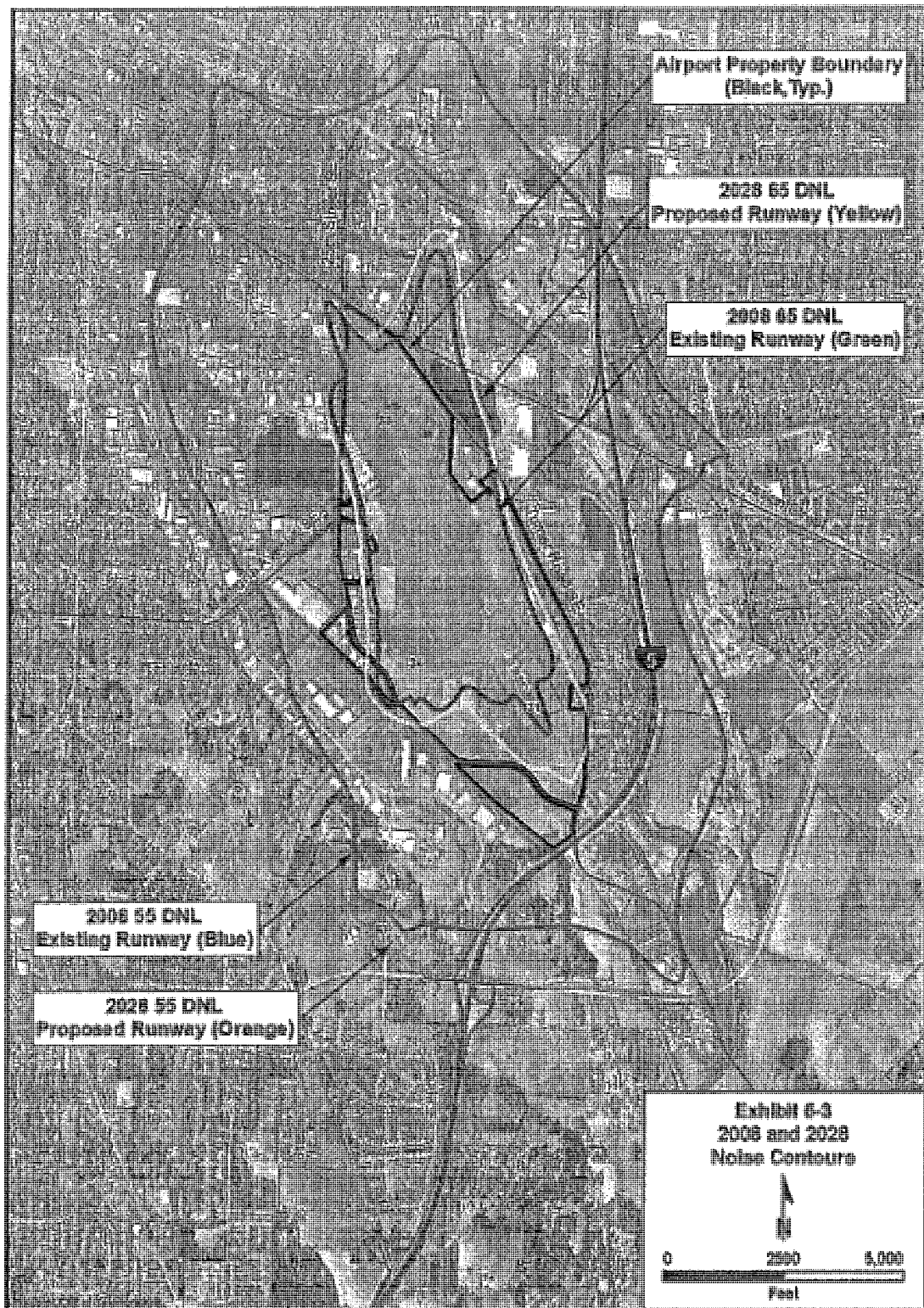
Sincerely,
Project Delivery Group, LLC

Brian Vinson, PE
Senior Engineer

Table 1-1: Land Use Troubleshooting Matrix				
Land Use	Potential Impact	Chapter 3 Reference	Example Actions Available	Chapter 6 Reference
Existing Residential Development	Noise Concern	Page 3-13	Soundproofing Noise Easement	Page 6-10
	Safety Concern	Pages 3-1 & 3-11	Fee Simple Acquisition	Page 6-5
Proposed Residential Development	Noise Concern	Page 3-13	Hold Harmless Agreement/Fair Disclosure Statement	NA
	Safety Concern	Pages 3-1 & 3-11	Comprehensive Plan	Page 6-3
Landfills	Safety Concern	Pages 3-1 & 3-12	Airport Overlay Zoning	Page 6-4
School, Hospital, and Church Development	Noise Concern	Page 3-13 & 3-18	Soundproofing Noise Easement	Page 6-10
	Safety Concern	Pages 3-11	Airport Overlay Zoning	Page 6-4
Radio / Television Tower	Safety Concern	Page 3-12	Avigation & Hazard Easement	Page 6-6
			Height Limitation Zoning	Page 6-4
Factory Smoke	Safety Concern	Page 3-12	Avigation & Hazard Easement	Page 6-6
			Airport Overlay Zoning	Page 6-4
Golf Courses	Safety Concern	Page 3-11 & 3-12	Avigation & Hazard Easement	Page 6-6
			Airport Overlay Zoning	Page 6-4
Auditorium / Outdoor Theaters	Safety Concern	Page 3-11	Airport Overlay Zoning	Page 6-4
Power Lines	Safety Concern	Page 3-12	Avigation & Hazard Easement	Page 6-6
			Height Limitation Ordinance	Page 6-4
Agricultural Activities	Safety Concern	Pages 3-11 & 3-12	Avigation & Hazard Easement	Page 6-6
Water Impoundments	Safety Concern	Pages 3-11 & 3-12	Avigation & Hazard Easement	Page 6-6

Exhibit #5 – Noise Compatibility						
Legend: Y (Yes) - Land use and related structures compatible without restrictions N (No) - Land use and related structures are not compatible and should be prohibited NLR - Noise Level Reduction (outdoor to indoor) to be achieved through incorporation of noise attenuation into the design and construction of the structure DNL - Average Day-Night Sound Level 25, 30, 35 - Land use and related structures generally compatible; measures to achieve NLR of 25, 30, 35 dB must be incorporated into design and construction of structure.						
Land Use	Below 65	65-70	70-75	75-80	85-85	Over 85
Residential						
Residential, other than mobile homes and transient lodging	Y	N ⁽¹⁾	N ⁽¹⁾	N	N	N
Mobile home parks	Y	N	N	N	N	N
Transient lodgings	Y	N ⁽¹⁾	N ⁽¹⁾	N ⁽¹⁾	N	N
Public						
Schools	Y	N ⁽¹⁾	N ⁽¹⁾	N	N	N
Hospitals and nursing homes	Y	25	30	N	N	N
Churches, auditoriums, and concert halls	Y	25	30	N	N	N
Government services	Y	Y	25	30	N	N
Transportation	Y	Y	Y ⁽²⁾	Y ⁽³⁾	Y ⁽⁴⁾	Y ⁽⁴⁾
Parking	Y	Y	Y ⁽²⁾	Y ⁽³⁾	Y ⁽⁴⁾	N
Commercial						
Offices, business and professional	Y	Y	25	30	N	N
Wholesale and retail - building materials, hardware and farm equipment	Y	Y	Y ⁽²⁾	Y ⁽³⁾	Y ⁽⁴⁾	N
Retail trade - general	Y	Y	25	30	N	N
Utilities	Y	Y	Y ⁽²⁾	Y ⁽³⁾	Y ⁽⁴⁾	N
Communication	Y	Y	25	30	N	N





Mail Processing Center
Federal Aviation Administration
Southwest Regional Office
Obstruction Evaluation Group
2601 Meacham Boulevard
Fort Worth, TX 76137

Aeronautical Study No.
2012-ANM-2907-OE

Issued Date: 03/19/2013

Bo Rushing
Rushing Mission Street, LLC
3110 25th Street SE
Salem, OR 97302

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure:	Building construct apartment buildings
Location:	Salem, OR
Latitude:	44-55-17.21N NAD 83
Longitude:	123-00-53.88W
Heights:	183 feet site elevation (SE) 40 feet above ground level (AGL) 223 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or:

- ☐ At least 10 days prior to start of construction (7460-2, Part I)
☒ Within 5 days after the construction reaches its greatest height (7460-2, Part II)

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed and maintained in accordance with FAA Advisory circular 70/7460-1 K Change 2.

This determination expires on 09/19/2014 unless:

- (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by this office.
- (b) extended, revised, or terminated by the issuing office.
- (c) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates , heights, frequency(ies) and power . Any changes in coordinates , heights, and frequencies or use of greater power will void this determination. Any future construction or alteration , including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

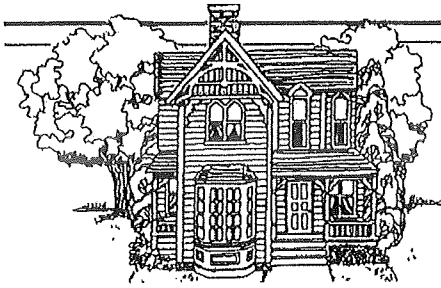
This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

If we can be of further assistance, please contact our office at (310) 725-6591. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2012-ANM-2907-OE.

Signature Control No; 176764559-185693689
Tamera Burch
Technician

(DNE)



SESNA

South East Salem Neighborhood Association
555 Liberty St SE Salem, Oregon 97301 (503) 588-6207

October 8, 2015

Dear Ms. Rushing,

I am writing in regard to your proposed housing development on 23rd Street SE. SESNA very much appreciates your presenting us with your proposal early in the process. Since listening to the presentation made by your engineer, Mr. Whisenhut, at our September meeting, we have been discussing the matter intensively.

The results of our discussion are mixed. By a 5-4 vote, a bare majority supports your project. Virtually all the board members like some aspects of it. Most see it as an aesthetic and practical improvement over the earlier proposal in light of the changes you've made (e.g., more public and open green spaces). Many appreciate your commitment to the women of Grace House, and the slim majority also believes this development could have a salutary impact on future mixed-use development in the area between Mission and McGilchrist Streets.

On the other hand, many criticisms of the proposal are similar to those that arose three years ago. Some colleagues feel it is too large for a property of that size in an area that lacks some important urban amenities, such as a nearby park. Others had concerns about traffic issues, such as the inability to make a left turn onto Mission Street and the difficulty accessing westbound transit. In addition, there was feeling among some board members that the site – wedged in as it is between the lovely K-Mart parking lot and an area largely zoned commercial and industrial - is simply not appropriate for residential or mixed-use development.

A major issue that arose in our conversation is the role of the airport in determining the future of the property. The proposal is to build denser housing than what the FAA recommends, however, no documentation of the safety record of dense housing adjacent to general aviation airports has been presented to justify this project. Moreover, the Airport Administrator's recommendation was one of the decisive determinants of the proposal's fate three years ago. You seem to think it is a non-issue this time around, but we don't really see why the Airport Administrator would reverse his earlier decision. The comments from Brian Vinson may be right about the locality's final authority to determine what gets built within the airport overlay zone, but we have no evidence that the city has changed its outlook since your last proposal.

In sum, the 5-4 majority in favor of the project is not a ringing endorsement. It reveals that people are generally split on the issue and we believe that this would reflect the sentiment of the neighborhood in general.

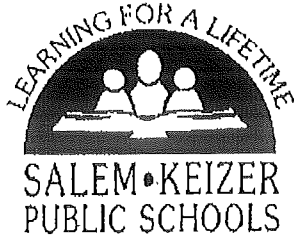
Again, SESNA is very appreciative of your giving us a preview of your project proposal. We would be open to talking further with you about it or some other version of the development, should you so desire.

Please let me know if you have any questions.

Best wishes,

Bill Smaldone
Chair, SESNA

ATTACHMENT E



DAVID FRIDENMAKER, Manager
Facility Rental, Planning, Property Services
3630 State Street, Bldg. C • Salem, Oregon 97301-5316
503-399-3335 • FAX: 503-375-7847

Christy Perry, Superintendent

January 21, 2016

Aaron Panko, Case Manager
Planning Division, City of Salem
555 Liberty Street SE, Room 305
Salem OR 97301

FAX No. 503-588-6005

RE: Land Use Activity
Salem Case No. CU16-01, 1700-1800 Block 23rd St. SE

SUMMARY OF COMMENTS

School Assignment: Bush Elementary School, Leslie Middle School, South Salem High School
School Capacity: Bush Elementary School does not currently have sufficient school capacity to serve the proposed development. Leslie Middle School and South Salem High School do have sufficient school capacity to serve the proposed development.
School Transportation Services: Student residing at the subject property would be eligible for school transportation services to the assigned schools.

Below is data and the District's comments regarding the proposed land use activity identified above. If you have questions, please call at (503) 399-3335.

ELEMENTARY SCHOOL INFORMATION (GRADES K TO 5)

1. School Name: Bush Elementary School
2. Estimated change in student enrollment due to proposed development: 19
3. Current school capacity: 324
4. Estimate of school enrollment including new development: 335
5. Ratio of estimated school enrollment to total capacity including new development: 103%.
6. Walk Zone Review: Eligible for transportation to Elementary School.
7. Estimate of additional students due to previous 2015 land use applications: 0
8. Estimate of additional students due to previous 2016 land use applications: 0
9. Estimated cumulative impact of 2015-16 land use actions on school capacity: 103% of capacity.

MIDDLE SCHOOL INFORMATION (GRADES 6 TO 8)

1. School Name: Leslie Middle School
2. Estimated change in student enrollment due to proposed development: 7
3. Current school capacity: 947
4. Estimate of school enrollment including new development: 797
5. Ratio of estimated school enrollment to total capacity including new development: 84%
6. Walk Zone Review: Eligible for transportation to Middle School
7. Estimate of additional students due to previous 2015 land use applications: 0

8. Estimate of additional students due to previous 2016 land use applications: 0
9. Estimated cumulative impact of 2015-16 land use actions on school capacity: 84% of capacity.

HIGH SCHOOL INFORMATION (GRADES 9 TO 12)

1. School Name: South Salem High School
2. Estimated change in student enrollment due to proposed development: 8
3. Current school capacity: 1,981
4. Estimate of school enrollment including new development: 1,889
5. Ratio of estimated school enrollment to total capacity including new development: 95%
6. Walk Zone Review: Eligible for transportation to High School.
7. Estimate of additional students due to previous 2015 land use applications: 1
8. Estimate of additional students due to previous 2016 land use applications: 0
9. Estimated cumulative impact of 2015-16 land use actions on school capacity: 95% of capacity.

ESTIMATE SUMMARY (GRADES K TO 12):

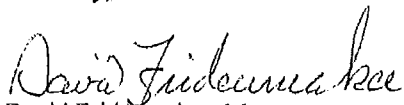
1. Total estimated change in student enrollment: 34
2. Total estimated student enrollment over capacity: 11

Developer should provide paved walk route(s) to allow pedestrian access and bicycle access to school(s) from all residences within the new development and should provide all improvements required by the City of Salem where new transportation routes are established or existing transportation routes change, such as school flashers, crosswalks, and signage. As per ORS 195.115, when the walk zone review indicates "eligible for transportation due to hazard" the District requests that the City initiate a planning process with the District to identify the barriers and hazards to children walking or bicycling to and from school, determine if the hazards can be eliminated by physical or policy changes and include the hazard elimination in the City's planning and budgeting process.

ASSUMPTIONS:

1. When land use request is granted, 96 new residence(s) will be built.
2. Estimates are computed using the Student Rate per Dwelling Method described in the District's Facility Study for years 2001-2020.
3. If current capacity exists at the schools currently serving the parcel then an estimate of zero cost, or no significant impact, is made.
4. If current capacity does not exist at the schools currently serving the parcel then an estimate of cost for one-time capital improvements is made.
5. Income from the proposed land use for capital improvement is assumed to be zero since capital improvement funds come from voter approved bond measures that can be an unpredictable and irregular source of income.

Sincerely,



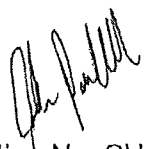
David Fridenmaker, Manager
Planning and Property Services

c: Mike Wolfe, Chief Operations Officer
Jim Jenney, Manager – Custodial and Property Services
William White, Manager - Risk Management
Michael Shields, Manager - Transportation



SALEM MUNICIPAL AIRPORT — McNARY FIELD

John Paskell
Airport Manager

DATE: January 25, 2016
TO: Aaron Panko, Case Manager
FROM: John Paskell, Airport Manager 
RE: Conditional Use Permit Application No: CU 16-01.
Amanda Application Number: 15-121963-ZO

Aaron:

Thank you once for the opportunity to provide comment on this proposal, and you will note that the issues from an airport perspective remain the same as in previous correspondence for the same (or similar) proposal.

It is noted by the airport that the applicant references a determination from the FAA of "no hazard" as it relates to the *height* of the proposed development, and the airport concurs with that finding.

It is also noted that the applicant references FAA guidance and the Oregon Department of Aviation (ODA) Land Use Guidebook's determination that the 65 DNL sound level is an appropriate threshold for measuring noise that is incompatible with residential development, and that the proposed development would be outside the 65 DNL noise contour as identified in the Airport's 2012 Master Plan. The airport concurs with that assessment, but would also note that the proposed development is immediately outside the 65 DNL noise contour, well within the 55-64 DNL noise range, and will subject residents to "moderate" noise exposure from landing and departing aircraft. OAR 340-035-0045 contains the State of Oregon criteria for airport noise, and is used to identify noise-sensitive properties near the airport that may experience regular noise exposure. Noise-sensitive properties are defined as "real property normally used for sleeping, or normally used for schools, churches, hospitals or public libraries." This proposal places noise-sensitive residential properties immediately under the departure and final approach to the airport's primary instrument runway, subjecting residents to significant noise impacts.

It is further noted that the applicant recognizes that residential development in the vicinity of an airport is **NOT** considered a compatible land use by the FAA, and the airport concurs with that assessment. The FAA considers residential development adjacent to, or in the immediate vicinity of, an airport as an incompatible land use. A copy of the airport's Grant Assurance #21 is attached and which requires the City to "take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operation, including landing and takeoff of aircraft." Also attached is a letter from FAA dated August 16, 2012 reminding the City to be

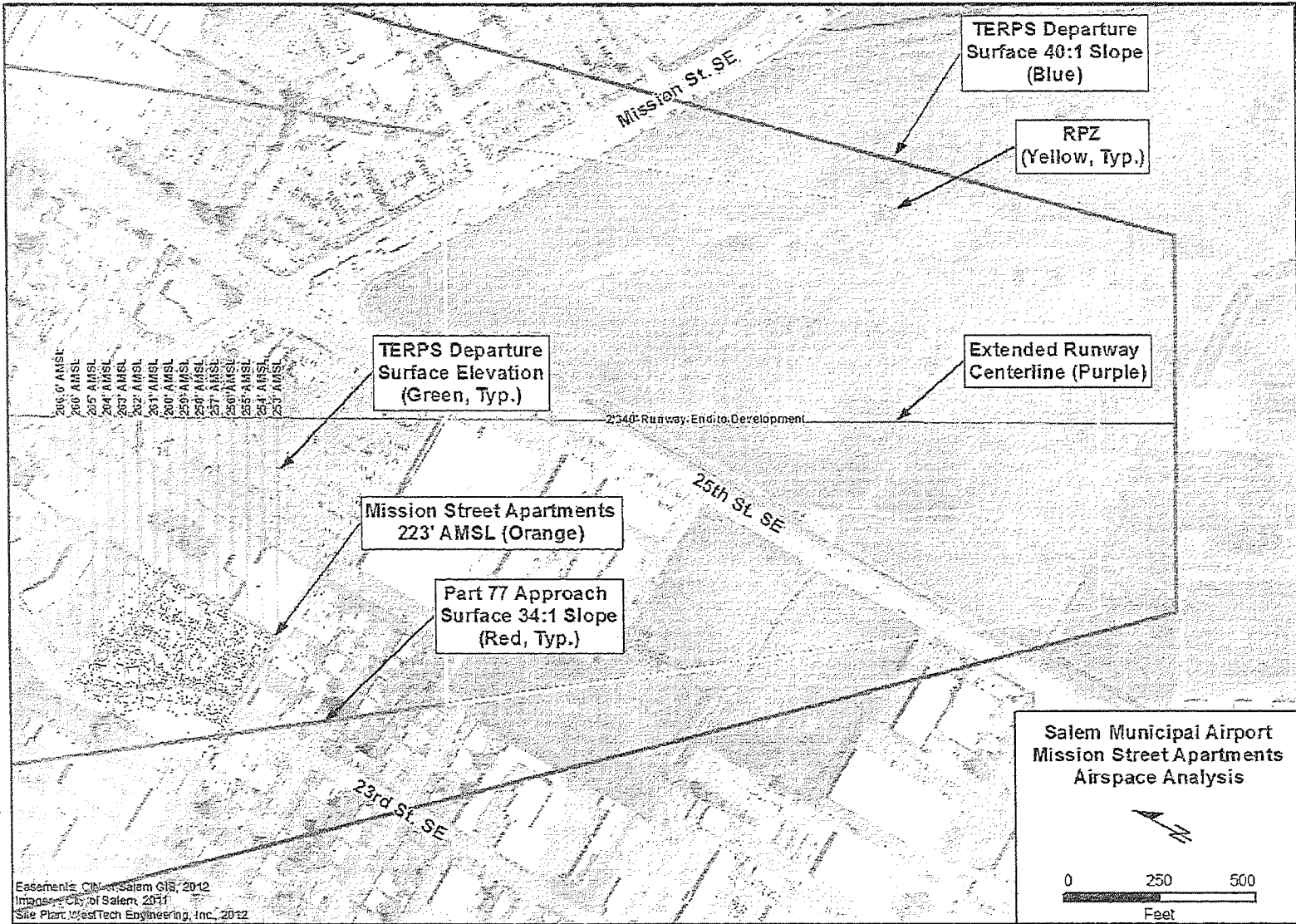
aware of residential land use around airports. Permitting a residential development in a zone that does not currently allow residential development is the exact opposite action that Grant Assurance #21 requires. This development proposal places 96 residential dwelling units approximately ½ mile from the airport's primary runway, within 450' of the Runway Protection Zone, and immediately beneath the approach path of the airport's primary runway (see attached Distance Diagram). The FAA would likely consider this development an inappropriate use, and the City's specific permitting of it an inappropriate action in violation of Grant Assurance #21, potentially subjecting the City to civil penalties, repayment of past grants, and/or loss of future grant opportunities.

The applicant references Table 6-1, the Land Use Compatibility Matrix (attached) of the ODA Land Use Guidebook and correctly points out that there is very few land uses considered compatible on and around airports. Table 6-1 identifies Residential Development in an Approach Surface as "not clearly compatible or incompatible, and requires further study."

Further study leads one to Chapter 7 of the ODA Land Use Guidebook matrix of Limitations and Restrictions on Allowed Uses, Table 7-1 (attached). The development would be located under the airport's Approach Surface and footnote L¹⁰ states that "Residential densities within 500-1,000 feet of the outer edge of the Runway Protection Zone (RPZ) not exceed 2 units per acre. The proposed development is 440' from the outer edge of the RPZ, and as the development site is approximately 3 acres and the proposed number of units is 96, the calculated density of 32(+/-) units per acre greatly exceeds ODA guidelines of 2 units per acre, which should be considered an incompatible use.

Given the above, it is the position of the Airport that the proposed project is not a compatible land use near an airport and does not conform to state and federal guidance on land use around airports. As such, the Airport recommends against issuing the Conditional Use Permit.

Thank you once again for the opportunity to comment, and as always if you have any questions or need additional information please let me know.



which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-

- (1) Operating the airport's aeronautical facilities whenever required;
 - (2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 - (3) Promptly notifying airmen of any condition affecting aeronautical use of the airport. Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.
- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. **Hazard Removal and Mitigation.** It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. **Compatible Land Use.** It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. **Economic Nondiscrimination.**

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to-

In addition to the regulations in the ORS and OAR, the ODA Guidebook is "a working guide to be used by planners, decision makers and other interested parties, to provide information and recommendations regarding methods of addressing incompatible land uses around airports." The ODA Guidebook provides land use compatibility techniques that help local governments comply with federal regulations for FAR Part 77 and AC 150/5300-13 surfaces. The land use compatibility matrix from the ODA Guidebook is presented in **Table 6-1**. It is recommended that this matrix be used in conjunction with the ODA Guidebook Noise and Land Use matrix in **Table 6-3**.

Table 6-1: ODA Guidebook Land Use Compatibility Matrix

Land Use	Primary Surface	Transitional Surface	Horizontal Surface	Conical Surface	Approach Surface	RPZ
Residential						
Residential, other than those listed below	NC	NC	•	C	•	NC
Mobile home parks	NC	NC	•	C	•	NC
Transient lodgings	NC	NC	•	C	•	NC
Public Use						
Places of public assembly (schools, hospitals, churches, auditoriums)	NC	NC	•	C	NC	NC
Government services	NC	•	C	C	•	NC
Transportation (parking, highways, terminals)	NC	•	C	C	•	•
Commercial Use						
Offices, business, professional	NC	•	C	C	•	NC
Wholesale, retail, building materials, hardware, and farm equipment	•	•	C	C	•	NC
Retail trade—general	•	•	C	C	•	NC
Utilities	•	•	•	•	•	•
Communication	NC	•	•	•	•	•
Manufacturing and production						
Manufacturing—general	NC	•	•	•	•	NC
Agricultural (except livestock) and forestry	•	•	C	C	•	•
Livestock farming and breeding	NC	•	•	C	•	NC
Mining and fishing, resource production and extraction	NC	NC	•	•	•	NC
Recreational						
Outdoor sports arenas and spectator sports	NC	NC	•	C	NC	NC
Nature exhibits and zoos	NC	NC	•	C	NC	NC
Amusement parks, resorts, and camps	NC	NC	C	C	NC	NC
Golf courses	NC	NC	C	C	NC	NC
Parks	NC	•	•	•	•	•
C: Generally compatible land use						
NC: Incompatible Land Use						
•: Not clearly compatible or incompatible, requires specific study						

Source: 2003 ODA Guidebook

Table 7-1 also outlines the permitted, permitted with circumstances, and non-permitted uses relative to the general impact areas.

b.2 Airport Direct Impact Area

The area within 5,000 feet of an airport runway, excluding the lands within the runway protection zones and the approach surfaces is defined as the Airport Direct Impact Area. This physical area is shown in Exhibit 7-2. The dimensions of the various surfaces depend upon the runway type. As noted in Table 7-1, there are various levels of development allowed based upon the type of land use.

b.3 Airport Secondary Impact Area

The areas within 5,000 feet and 10,000 feet of an airport runway, as presented in Exhibit 7-2, are defined as the Airport Secondary Impact Area. This area includes all of the horizontal surface and the conical surface from the FAR Part 77 Surfaces. This area has various uses allowed as noted in Table 7-1.

TABLE 7-1: LIMITATIONS & RESTRICTIONS ON ALLOWED USES				
KEY: P = Use is Permitted L = Use is Allowed Under Limited Circumstances (see footnotes) N = Use is Not Allowed				
	RPZ ¹	Approach Surface ²	Direct Impact Area	Secondary Impact Area
Public Airport	L ²	L ⁹	P	P
Residential	N	L ¹⁰	L ¹⁴	P
Commercial	N	L ⁹	L ¹⁵	P
Industrial	N	L ⁹	P	P
Institutional	N	L ⁹	L ¹⁵	P
Farm Use	P ³	P ³	P ³	P ³
Roads/Parking	L ⁴	P	P	P
Utilities	L ⁶	L ⁶	L ⁵	L ⁵
Parks/Open Space	L ⁶	P	P	P
Golf Courses	L ⁷	L ^{7,9}	L ⁷	L ⁷
Athletic Fields	N	L ⁹	L ¹⁴	P
Sanitary Landfills	N	N	N	N
Water Treatment Plants	N	N	N	N
Mining	N	L ¹¹	L ¹¹	L ¹¹
Water Impoundments	N	N ¹²	N ¹⁶	N ¹⁶
Wetland Mitigation	N	L ¹³	L ¹³	L ¹³

Source: Model Public Use Airport Safety And Compatibility Overlay Zone (Visual and Instrument Approach Airports), ODA

Notes:

- ¹ No Structures shall be allowed within the Runway Protection Zone (RPZ). Exceptions shall be made only for structures accessory to airport operations whose location within the RPZ has been approved by the Federal Aviation Administration.
- ² In the RPZ, public airport uses are restricted to those uses and facilities that require location in the RPZ.
- ³ Farming practices that minimize wildlife attractants are encouraged.
- ⁴ Roads and parking areas are permitted in the RPZ only upon demonstration that there are not practicable alternatives. Lights, guardrails, and related accessory structures are prohibited. Cost may be considered in determining whether practicable alternatives exist.
- ⁵ In the RPZ, utilities, powerlines and pipelines must be underground. In approach surfaces and in airport direct and secondary impact areas, the proposed height of utilities shall be coordinated with the airport sponsor and Department of Aviation (ODA).
- ⁶ Public assembly facilities are prohibited in the RPZ.
- ⁷ Golf courses may be permitted only upon demonstration, supported by substantial evidence, that management techniques will be utilized to reduce existing wildlife attractants and avoid the recreation of new wildlife attractant. Such techniques shall be required as conditions of the approval. Structures are not permitted within the RPZ. For purposes of this document, tee markers, tee signs, pin cups and pins are not considered to be structures.

- ⁸ Within 10,000 feet from the end of the primary surface of a non-precision instrument runway, and within 50,000 feet from the end of the primary surface of a precision instrument runway.
- ⁹ Public assembly facilities may be allowed in an approach surface only if the potential danger to public safety is minimal. In determining whether a proposed use is appropriate, consideration shall be given to: proximity to the RPZ; density of people per acre; frequency of use; level of activity at the airport; and other factors relevant to public safety. In general, high density uses should not be permitted within airport approach surfaces, and on-residential structures should be located outside approach surfaces unless no practicable alternatives exist.
- ¹⁰ Residential densities within approach surfaces should not exceed the following densities: (1) within 500 feet of the outer edge of the RPZ, 1 unit per acre; (2) within 500 to 1,500 feet of the outer edge of the RPZ, 2 units per acre; (3) within 1,500 to 3,000 feet of the outer edge of the RPZ, 4 units per acre.
- ¹¹ Mining operations involving the creation or expansion of water impoundments shall comply with the requirements of this document regarding water impoundments.
- ¹² Water impoundments are prohibited within 5,000 feet from the edge or end of a runway.
- ¹³ Wetland Mitigation required for projects located within an approach surface, the airport direct or secondary impact area shall be authorized only upon demonstration, supported by substantial evidence, that it is impracticable to provide mitigation outside of these areas. Proposals for wetland mitigation shall be coordinated with the airport sponsor, the Department of Aviation, the FAA and the wetland-permitting agencies prior to the issuance of required permits. Wetland mitigation shall be designed and located to avoid creating a wildlife hazard or increasing hazardous movements of birds across runway and approach surfaces. Conditions shall be imposed as are appropriate and necessary to prevent in perpetuity an increase in hazardous bird movements across runway and approach surfaces. See section 0.00 of Appendix D or E for the best management practices for airports located near significant wetlands or wildlife habitat areas.
- ¹⁴ Within the transitional surface, residential uses and athletic fields are not permitted.
- ¹⁵ Within the transitional surface, overnight accommodations, such as hotels, motels, hospitals and dormitories, are not permitted.
- ¹⁶ See section .08 of Appendix D or E prohibiting or regulating water impoundments within 5,000 or 10,000 feet of the end or edge of a runway.

7.1c. Public Use Airports with Instrument Approaches

The larger general aviation, and the smaller commercial service or business class general aviation airports in the state, can apply the Public Use Airports With Instrument Approaches template. Many of the larger airports in Oregon that fall into this classification have airport-specific planning studies that provide more detailed safety and noise related data. Information from these airport-specific studies is considered preferable for compatible land use planning in lieu of the generalized safety and noise related planning templates described in this section.

As shown in Exhibit 7-3, this template provides an assortment of dimensions depending upon the type of runway and the level of instrumentation.

c.1 Airport Noise Impact Boundary

The Airport Noise Impact Boundary includes all areas within 1,500 feet of an airport runway or within an established noise contour boundary which exceeds 55 DNL. This area typically includes the RPZ, primary surface and transitional surfaces. Development in this area should reflect the findings shown in Table 7-1.

c.2 Airport Direct Impact Area

For this airport category, the Airport Direct Impact Area includes the property within 5,000 feet of an airport runway, excluding the lands within the runway protection zones and approach surfaces. As illustrated in Table 7-1, this area has moderate restrictions on the type of land uses allowed.

c.3 Airport Secondary Impact Area

The Airport Secondary Impact Area encompasses the property within 5,000 feet and 10,000 feet of an airport runway. As depicted in Exhibit 7-3, the dimensions of the surfaces vary depending upon the runway type and level of instrumentation. Table 7-1 provides a broad summary of the compatible land uses for this area.



U.S. Department
of Transportation
Federal Aviation
Administration

Northwest Mountain Region
Seattle Airports District Office
1601 Lind Avenue S.W., Suite 250
Renton, Washington 98057-3356

August 16, 2012

Mr. John Paskell
Airport Administrator
City of Salem, McNary Field
2990 25th St., SE
Salem, OR 97302

Dear Mr. Paskell,

The Salem Airport Layout Plan (ALP) dated August, 2012 and submitted by Mead & Hunt, Inc., is hereby approved. A signed copy of the ALP is enclosed.

This approval considers only the safety, utility, and efficiency of the Salem Airport, and is conditioned on acknowledgment that any development on airport property requiring federal environmental approval must receive such written approval from the Federal Aviation Administration (FAA) prior to commencement of the subject development. This ALP approval is also conditioned on acceptance of the plan under local land use laws. We encourage appropriate agencies to adopt land use and height restrictive zoning based on the plan since action toward this end is a prerequisite of the Airport Improvement Program (AIP). Grant Assurance 21, Compatible Land Use, requires airport sponsors to take appropriate action, including the adoption of zoning laws to restrict the use of land adjacent to, or in the immediate vicinity of the airport, to activities and purposes compatible with normal airport operations including the arrival and departure of aircraft. The FAA recognizes residential development adjacent to the airport property as an incompatible land use.

Approval of the plan does not indicate that the United States will participate in the cost of any development proposed. When airport construction, alteration, or deactivation is undertaken, such action requires notification and review in accordance with the provisions of Part 77 and Part 157 of the Federal Aviation Regulations.

Please attach this letter to the approved Airport Layout Plan and retain it in the airport files for future use under the Airport Improvement Program.

Sincerely,









Carol A. Suomi
Manager, Seattle Airports District Office

Encl: McNary Field ALP dtd Aug 2012

cc:
Mr. Damon Smith, Mead & Hunt, Inc.

Airport Overlay Zone

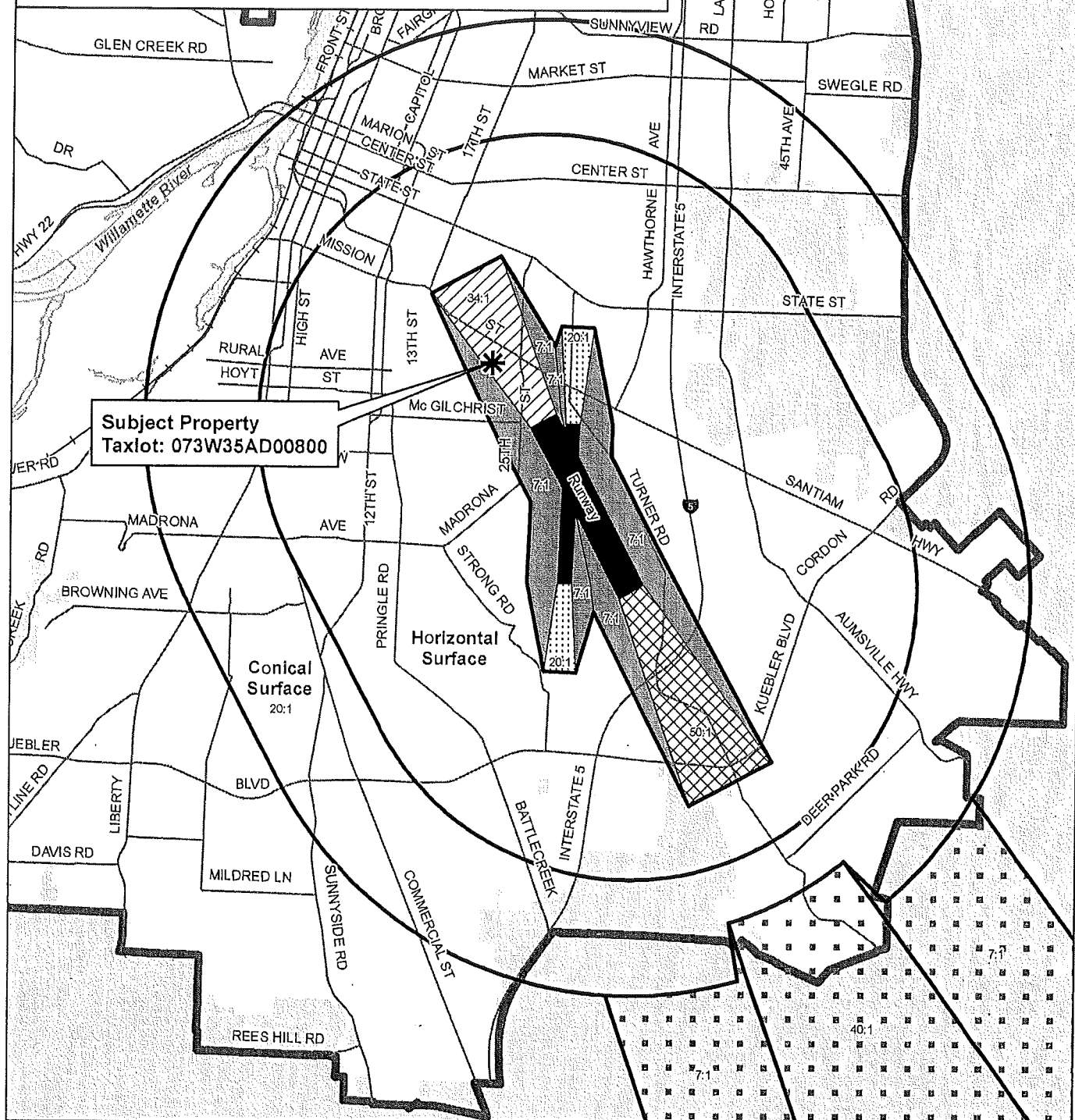
Legend

- | | |
|--|---|
|  Primary Surface |  Transitional Surface |
|  PIRA |  (NEED DESCRIPTION) |
|  RLUVM |  Urban Growth Boundary |
|  RLUVA/URVA
(URVA exists within RLUVA) |  Outside Salem City Limits |

0 2,000 4,000
Feet



CITY OF *Salem*
AT YOUR SERVICE





LAND USE APPEAL APPLICATION

1. GENERAL DATA REQUIRED *[to be completed by the appellant]*

CU16-01

March 8, 2016

Case # Being Appealed

Decision Date

1700-1800 Block of 23rd Street SE

Address of Subject Property

4336 Commercial Street SE, Suite 140, Salem, OR 97302

Appellants Mailing Address with zip code

bo@rushinggroup.com

503-588-8500

Appellant's E-mail Address

Day-time Phone / Cell Phone

Appellant's Representative or Professional to be contacted regarding matters on this application, if other than appellant listed above:

Project Delivery Group, LLC; Brian Vinson

3150 22nd Street SE Salem, OR 97302

Name

Mailing Address with ZIP Code

brianv@pdgnw.com

503-364-4004

E-Mail Address

Day-time Phone / Cell Phone

2. SIGNATURES OF ALL APPELLANTS

Signature: Bo RushingDate: 3/21/16Printed Name: Bo Rushing

Signature: _____

Date: _____

Printed Name: _____

3. **REASON FOR APPEAL** Attach a letter, briefly summarizing the reason for the Appeal. Describe how the proposal does not meet the applicable criteria as well as verification establishing the appellants standing to appeal the decision as provided under SRC 300.1010

FOR STAFF USE ONLY

Received By: AGLDate: 3/23/2016Receipt No: 15-121963-20
16-10327331Appeal Deadline: 5:00 pm 3/23/2016Case Manager: Aimee Payton



March 22, 2016

City of Salem
Attention: City Council
555 Liberty Street SE
Salem, OR 97302

RE: CU16-01 Denial Appeal

City Council,

Pursuant to SRC 300.1010, the applicant, Bo Rushing of Rushing Real Estate, Inc., has engaged Project Delivery Group to assist with the preparation and presentation of the appeal for case number CU16-01 (application no. 15-121963-ZO). This Conditional Use Permit application was denied by the Hearings Officer on March 8, 2016.

The conditional use approval criteria set forth in SRC 240.005(d) is as follows:

- 1) The proposed use is allowed as a conditional use in the zone;
- 2) The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions; and
- 3) The proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property.

The applicant has demonstrated compliance with the approval criteria listed above and based on this, the denial is being appealed.

Additional information will be provided in the presentation before the City of Salem Council.

Sincerely,
Project Delivery Group, LLC

Britany Randall
Land Use Planner