



COMMUNITY DEVELOPMENT DEPARTMENT

555 Liberty St. SE / Room 305 • Salem, OR 97301-3503 • (503) 588-6173 • (503) TTY 588-6353 • (503) Fax 588-6005

May 18, 2016

***Si necesita ayuda para comprender esta información, por favor llame 503-588-6173.***

**NOTICE OF FINAL LAND USE DECISION      Conditional Use Case No. CU16-01  
for Property located at 1700-1800 Block of 23<sup>rd</sup> St SE**

YOU ARE HEREBY NOTIFIED that the Salem Planning Commission, at their May 17, 2016 session, adopted findings **reversing** the Hearings Officer's decision. A copy of the Order is attached.

Any person with standing may appeal the City Council's decision by filing a "Notice of Intent to Appeal" with the Land Use Board of Appeals, 775 Summer St NE, Suite 330, Salem OR 97301-1283, **not later than 21 days after May 18, 2016**. Anyone with questions regarding filing an appeal with the Oregon Land Use Board of Appeals should contact an attorney.

The complete case file, including findings, conclusions, modifications, and conditions of approval, if any is available for review at the Community Development Department, 555 Liberty St SE, Room 305, Salem OR 97301. If you have any further questions, you may contact the City of Salem Planning Division at 503-588-6173.

Lisa Anderson-Ogilvie, AICP  
Planning Administrator

Attachment: Order

**BEFORE THE PLANNING COMMISSION OF THE CITY OF SALEM**

<b>IN THE MATTER OF APPROVING</b>	<b>) ORDER NO. CU16-01</b>
<b>THE APPLICATION FOR A</b>	<b>)</b>
<b>CONDITIONAL USE PERMIT, CASE</b>	<b>)</b>
<b>NO. CU-16-01 FOR PROPERTY</b>	<b>) CONDITIONAL USE CASE NO.</b>
<b>LOCATED AT THE 1700-1800</b>	<b>) 16-01</b>
<b>BLOCK OF 23<sup>RD</sup> STREET SE</b>	<b>)</b>

This matter having come regularly for hearing before the Planning Commission at its April 19, 2016, May 3, 2016 and May 17, 2016 meetings, and the Planning Commission, having received evidence and heard testimony, makes the following findings and adopts the following order reversing the decision of the Hearings Officer and approving the application for a Conditional Use Permit in Case No. CU16-01.

**(I) PROCEDURAL FINDINGS:**

- (a) On December 15, 2015 the applicant filed the application, which was deemed complete on January 14, 2016.
- (b) A public hearing before the Hearings Officer 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 was the Planning Commission.
- (c) On April 19, 2016, upon proper notice being provided by the City, the Salem Planning Commission conducted a hearing on appeal of the application, and received testimony and evidence regarding the application. Planning Commission continued the public hearing until May 3, 2016, received additional testimony then conducted deliberations and voted on the application.
- (d) On May 3, 2016 The Planning Commission voted unanimously to reverse the Hearings Officer's denial, and to approve the application, subject to conditions of approval.
- (d) The Facts and Findings attached hereto as "Exhibit 1," are incorporated herein by this reference.

**(II) SUBSTANTIVE FINDINGS:**

- (a) The applicable criteria for approval of a conditional use permit are: SRC 240.005(d).
- (b) In August of 2012, City Council voted to deny a similar request to develop the subject property with a multi-family use, citing 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 City of Salem shops facility.
- (c) Testimony and evidence was received by the Planning Commission that the subject property is zoned IC (Industrial Commercial), and multi-family uses are allowed with a Conditional Use Permit. The Planning Commission finds that this most recent application has addressed the compatibility issues raised during previous applications. Complete findings are included in Exhibit 1.
- (d) 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 surrounding area is comprised of a mix of residential uses, light and heavy industrial users, including the City of Salem Shops facility, Les Schwab Tire and the property is in close proximity to the Salem Municipal Airport.
- (e) The Planning Commission finds that potential adverse noise impacts from surrounding land uses can be mitigated by the imposition of the following conditions of approval:

**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.

- (f) Significant trees are present on the property. The Planning Commission adopts the following condition of approval requiring all significant trees on the subject property to be preserved and protected through construction.

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

The Planning Commission finds that the application, as conditioned, meets the applicable criteria for approval of a Conditional Use Permit.

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE PLANNING COMMISSION OF THE CITY OF SALEM, OREGON:**

**Section 1.** The Salem Planning Commission reverses the decision of the Hearings Officer, and approves Conditional Use Permit Case No. CU16-01, subject to the following conditions of approval:

**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.

**Section 2.** This decision is effective on May 17, 2016.

ADOPTED by the Salem Planning Commission this 17th day of May, 2016.

  
\_\_\_\_\_  
Rich Fry, President  
Salem Planning Commission

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.

Case Manager: Aaron Panko, Planner III, [apanko@cityofsalem.net](mailto:apanko@cityofsalem.net)

Checked by: A. Panko

## **CU16-01 – Facts and Findings**

**APPLICATION:** Conditional Use Permit Case No. 16-01

**LOCATION:** 1700-1800 Block of 23<sup>rd</sup> Street SE (Marion County Assessor's Map and Tax Lot Numbers: 073W35AD / 00800)

**SIZE:** 2.88 Acres

**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)

**APPLICANT:** Bo Rushing, Rushing Group

**APPROVAL CRITERIA:** Conditional Use Permit: Salem Revised Code, Chapter 240

**ACTION:** REVERSE THE HEARINGS OFFICER DECISION, AND APPROVE, subject to the following zone change conditions:

**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.

### **120-DAY REQUIREMENT**

The application was deemed complete for processing on January 14, 2016. The State Mandated 120-day deadline for this case was originally May 13, 2016. The applicant granted a 30-day extension to the 120-day deadline, making the deadline to issue a final local decision in this case June 12, 2016.

### **BACKGROUND**

The subject property is located in the 1700-1800 Block of 23<sup>rd</sup> 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 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 Officer 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 was the Planning Commission.

On April 29, 2016, the Salem Planning Commission conducted a hearing on appeal of the application, and received testimony and evidence regarding the application. Planning Commission continued the public hearing until May 3, 2016, received additional testimony then conducted deliberations and voted unanimously to reverse the Hearings Officer's decision to deny the conditional use permit, and to approve the application, subject to conditions of approval.

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

## **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 22<sup>nd</sup> and Electric Overlay Zone – Single-Family Dwellings, light industrial uses  
West: Across 23<sup>rd</sup> Street SE, IC (Industrial Commercial); City of Salem Shops Facility

### **3. Site Analysis**

The subject property is approximately 2.88 acres in size and is currently vacant.

The subject property abuts 23<sup>rd</sup> 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 23<sup>rd</sup> 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.

The Planning Commission voted unanimously to include a condition of approval requiring all significant trees on the subject property to be preserved and protected through construction.

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

**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.

Written comments were received during written comment periods, and testimony was received before the Hearings Officer and at the appeal hearing before Planning Commission from surrounding property owners, business owners and other interested parties, both in support and in opposition of the applicant's request.

#### **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 testimony indicating what schools will serve potential students and provided a walk zone review indicating that the property will be eligible for transportation.

The Salem Municipal Airport has reviewed the proposal and provided testimony objecting to the proposed use.

## **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.

**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. The Planning Commission finds that the proposal meets this criterion.

### Criterion 2:

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

**Finding:** In determining what adverse impacts may be likely the Planning Commission finds that 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

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 may impact future residents. Because of the potential noise impact, the Planning Commission voted unanimously to adopt the following conditions of approval to help mitigate the noise impact of the surrounding neighborhood on residents:

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

### Criterion 3:

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

**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.

The Planning Commission finds that this most recent application has addressed the compatibility issues raised during previous applications. The following is a summary of the Planning Commission's findings:

- 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 23<sup>rd</sup> Street SE. A concern was raised by Council that the lack of off-street parking spaces may require people to cross 23<sup>rd</sup> 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 23<sup>rd</sup> Street SE in order to meet minimum off-street parking requirements, thereby eliminating this concern. Specifically, existing uses on the development site require a minimum of 63 off-street parking spaces, the 96-unit apartment complex requires a minimum of 144 off-street parking spaces for a total of 207 spaces required. The proposed site plan indicates that 215 spaces will be provided with the development, exceeding minimum parking requirements.

- 2) Pedestrian Accessibility.

**Finding:** 23<sup>rd</sup> Street SE is currently developed with sidewalks which connect to Mission Street SE. There is a Cherriots transit stop at the corner of 23<sup>rd</sup> 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 22<sup>nd</sup> Street and at the intersection with 25<sup>th</sup> Street. There is not a signalized crosswalk on 23<sup>rd</sup> Street SE. The site provides options for pedestrian and transit accessibility.

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 22<sup>nd</sup> 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 22<sup>nd</sup> 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.

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 proposed to Oxford Street SE. 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.

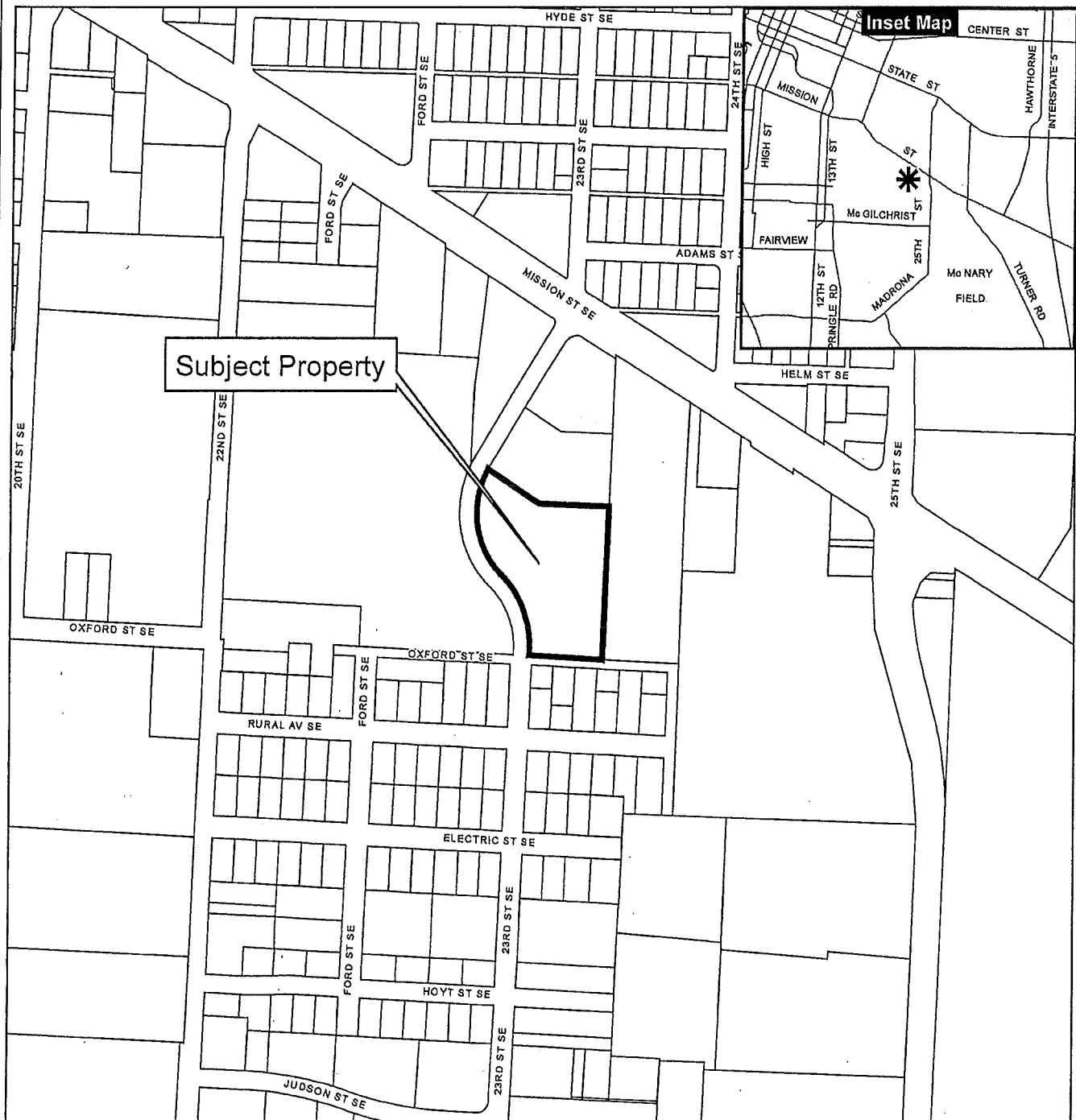
**Finding:** The subject property is directly across from the City of Salem Shops facility. During emergency operations the facility is used 24 hours a day, 7 days a week, residents could be subjected to increased noise impacts. In addition, noise from airport operations may impact future residents. The Planning Commission found that the Federal Aviation Administration has no jurisdiction over local land use decisions and that the noise thresholds listed in the Oregon Department of Aviation's Land Use Guidebook can be met through the imposition of conditions of approval. Because of the potential noise impact, the Planning Commission voted unanimously to adopt the following conditions of approval to help mitigate the noise impact of the surrounding neighborhood on residents:

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

**Conclusion:** Based on the findings and conditions of approval contained above, the Applicant has satisfactorily addressed the applicable criteria for granting approval of a Conditional Use Permit, the Planning Commission has voted unanimously to reverse the decision of the Hearings Officer and approve the Conditional Use Permit to allow development of a 96-unit multi-family apartment complex for property approximately 2.88 acres in size and zoned IC (Industrial Commercial).

# 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.

0 100 200 400 Feet



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