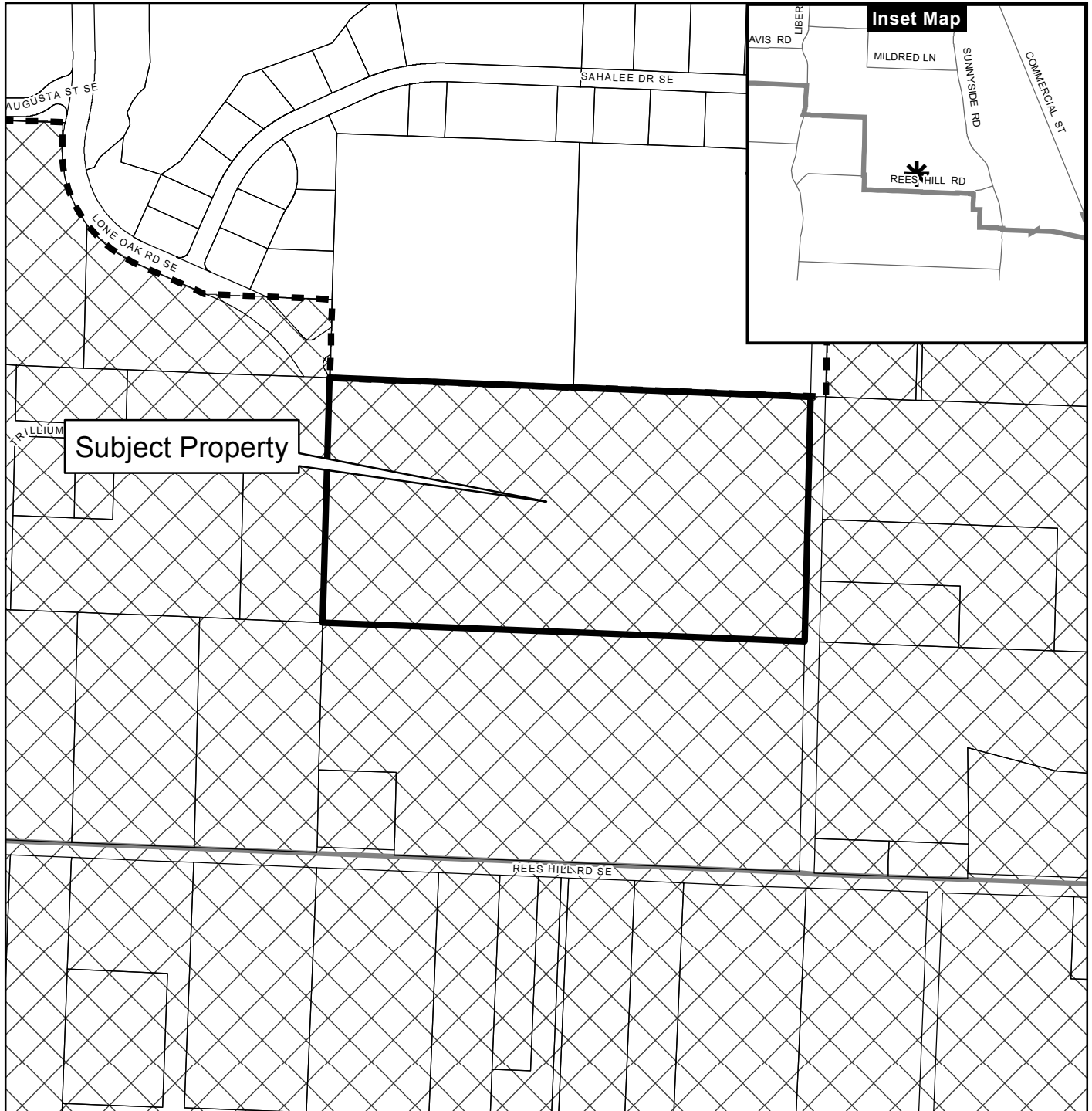


Vicinity Map

6719 Devon Avenue 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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LAND USE APPEAL APPLICATION

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

UGA 17-06

March 12, 2018

Case # Being Appealed

Decision Date

6719 Devon Avenue SE

Address of Subject Property

HSF Development LLC-3425 Boone Road SE-Salem-OR 97317

Appellants Mailing Address with zip code

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:

Mark Grenz, P.E.

1155 SE 13th Street-Salem-OR-97302

Name

Mailing Address with ZIP Code

mgrenz@mtengineering.net

503-363-9227

E-Mail Address

Day-time Phone / Cell Phone

2. **SIGNATURES OF ALL APPELLANTS**

Signature: [Signature] Date: 3/20/18

Printed Name: Chris Grenz

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: [Signature]

Date: 3/23/18

Receipt No: 18-121880-LD

Appeal Deadline: 3/27/18

Case Manager: [Signature]

Payment #

10413805



555 Liberty St SE
Room 305 - receipt
Salem OR 97301

Sequence #: 17-121850-LD

Payment #: 10413805

Date: Mar 23, 2018

Check #: 11871

LAND DIVISION

RECEIPT

Customer

BONAVENTURE SENIOR HOUSING
3425 BOONE RD SE
SALEM OR 97317

Payment for Address: **6719 DEVON AV SE**

Description	Billed Fees	Previously Paid	Today's Payment	Balance Due
Appeals of Planning Admin. Decision	\$250.50			
Automation Surcharge	\$5.00			
Processing Fee - PL	\$12.50			
Total for Bill # 984173:	\$268.00	\$0.00	\$268.00	\$0.00

RECEIPT TOTAL:	\$268.00	\$0.00	\$268.00	\$0.00
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Total Paid: \$268.00

PAY ONLINE: Have you heard about SPLASH? That is Salem's Permitting, Licensing, and Application Services Home website. You can make this payment online using your VISA or MasterCard if you become a registered SPLASH user. If you are interested, go to <http://splash.cityofsalem.net>



555 Liberty St SE
Room 305 - receipt
Salem OR 97301

Sequence #: 17-121850-LD

Payment #: 10413805

Date: Mar 23, 2018

Check #: 11871

LAND DIVISION

RECEIPT

Customer

BONAVENTURE SENIOR HOUSING
3425 BOONE RD SE
SALEM OR 97317

Payment for Address: **6719 DEVON AV SE**

Description	Balance Due
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TRANSMITTAL



DATE: March 23, 2018

JOB #: 6502

To: Pam Cole
City of Salem
Planning Division, Room 305
555 SE Liberty
Salem, Oregon

PROJECT: Devon Avenue

FROM: Brandie Dalton, Land-Use Planner

RE: 6719 DEVON AVENUE-UGA 17-06 APPEAL

<input type="checkbox"/> ENCLOSED	<input type="checkbox"/> PLANS	<input type="checkbox"/> FOR APPROVAL	<input type="checkbox"/> FOR VERIFICATION
<input type="checkbox"/> CHECKS INCLUDED	<input type="checkbox"/> DOCUMENTS	<input type="checkbox"/> FOR YOUR USE	<input type="checkbox"/> REVISE & RETURN
<input type="checkbox"/> PER YOUR REQUEST	<input type="checkbox"/> FOR SIGNATURE	<input type="checkbox"/> FOR FINAL DISTRIBUTION	<input type="checkbox"/> OTHER

COPIES	No.	DESCRIPTION

MESSAGE: THE ATTACHED IS THE APPEAL OF UGA 17-06 FOR PROPERTY LOCATED AT 6719 DEVON AVENUE. THE APPLICANT IS APPEAL THE LINKING STREET CONDITIONS OF APPROVAL AND THE PARKS CONDITIONS OF APPROVAL AS OUTLINED IN THE UGA DECISION DATED MARCH 12, 2018.

IF YOU HAVE ANY QUESTIONS REGARDING THIS ISSUE PLEASE LET ME KNOW.

SIGNED:

A handwritten signature in cursive script, reading "Brandie Dalton", written over a horizontal line.

March 23, 2018



VIA HAND DELIVERY

Salem Planning Commission
c/o Pamela Cole
City of Salem
Community Development Dept.
555 Liberty St SE / Room 305
Salem, OR 97301

RE: Appeal of Case No. UGA 17-06, Application No. 17-121850-LD
Our File No: 28572

Dear Commissioners:

Our office represents the Appellant HSF Development, LLC, an Oregon limited liability company (the "**Appellant**"). Appellant is appealing the Decision, as that term is defined below. Appellant submits this letter in response to the City of Salem's appeal form, which states an appellant in a land use case before the City of Salem ("**City**") should attach a letter to the appeal form. Specifically, the form states an Appellant should "[a]ttach 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 [UDC] 300.1010." Appellant submits this letter with the intent summarizing the reasons of the appeal; however, this letter should not be construed as limiting or waiving any basis for an appeal. All appeals in the City are heard de novo. See UDC 300.1040(a) "Appeals shall be de novo. In a de novo review, all issues of law and fact are heard anew, and no issue of law or fact decided by the lower level Review Authority is binding on the parties in the hearing. New parties may participate, and any party may present new evidence and legal argument by written or oral testimony."

Appellant is the owner of the real property located 6719 Devon Avenue SE, Salem Oregon (the "**Subject Property**"). The City issued a written land use decision concerning the Appellant's request on March 12, 2018, which the City identifies as Case No. UGA 17-06, 17-121850-LD (collectively the "**Decision**"). Staff has summarized the Decision as an "Urban Growth Preliminary Declaration request to determine the public facilities and infrastructure to develop 19.89 acres" located at the Subject Property. This appeal is timely filed, and Appellant has standing for the appeal.

Park Place, Suite 200
250 Church Street SE
Salem, Oregon 97301

Post Office Box 470
Salem, Oregon 97308

tel 503.399.1070
fax 503 371.2927

www.sglaw.com

Reasons for Appeal

Below is a summary of the reasons for the appeal:

1. As stated in the Decision, the applicable approval criteria are governed by UDC 200.25(d) and (e), 200.055 (Standards for street improvements), 200.060 (Standards for sewer improvements), 200.070 (Standards for storm drainage improvements), and 200.075 (Standards for park sites) (collectively the "**Approval Criteria**"). However, the City's application of Approval Criteria is limited by ORS 197.307(4), which restricts City's application of approval criteria and development standards to only "only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land." The Subject Property is designated for residential development and the City's Urban Growth Management regulations require the requested UGA permit as a condition precedent to land division or the intended residential land division (Appellant submitted a draft plan for 86 residential lots concurrent with Appellant's UGA permit request and annexation request), and therefore, ORS 197.307(4) applies. ORS 197.307(4) states in relevant part:

- (4) "**** a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:
 - (a) May include, but are not limited to, one or more provisions regulating the density or height of a development.
 - (b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay."

The burden of proving Approval Criteria satisfies the clear and objective standards is the City's burden. ORS 197.831.

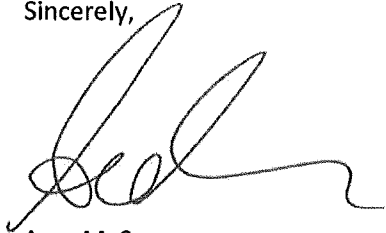
2. Condition of Approval No. 10 is unconstitutional under the Takings Clause of the Fifth Amendment of the United States Constitution and Article I, Section 18 of the Oregon Constitution. The impacts of the proposed development are limited to increasing the expected visits to the City's Parks Facilities by occupants the proposed 86 residences. The cost of dedication of ten (10) acres of real property, or alternatively the payment of a \$200,000.00 fee, is grossly disproportionate to the impact from the Appellant's proposed development. Appellants are already obligated to pay Parks SDC fees in the amount of \$4,404.24 per residence (an anticipated total fee of \$378,764.64). These Parks SDC fees adequately address Appellant's impact on the Parks Facility system. No additional contribution is warranted. Appellant requests the Planning Commission to remove the Condition of Approval No. 10.

The City's condition of approval is subject judicial review for unconstitutional takings under *Dolan v. City of Tigard*, 512 US 734, 114 S Ct 2309, 120 L Ed 2d 304 (1994) and *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 US 595, 133 S Ct 2586, 186 L Ed 2d 697 (2013); *see also Carver v. City of Salem*, 42 Or LUBA 305 (Or Luba), 2002 WL 31925740 (applying exaction analysis to UGA permit). The City may not condition an approval based on an unconstitutional exaction and may not deny an application in lieu of such an approval. The City has failed to satisfy its burden of adopting findings of proportionality. If the City refuses to accept Appellant's request, the City will be

subject to claims under ORS 197.796, including mandatory attorney fees to the prevailing party.

Appellant is willing to accept the Decision subject to proposed Conditions of Approval Nos. 1 through 9

Sincerely,

A handwritten signature in black ink, appearing to read 'Alan M. Sorem', with a stylized, flowing script.

ALAN M. SOREM

Email: asorem@sglaw.com

Of Attorney for Appellant