



HEARING NOTICE

LAND USE REQUEST AFFECTING THIS AREA

Audiencia Pública

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

CASE NUMBER:	Appeal of the Planning Administrator's decision on Urban Growth Preliminary Declaration Case No. UGA17-06
AMANDA APPLICATION NO:	17-121850-LD
HEARING INFORMATION:	City Council, Tuesday, May 29, 2018, at 6:00 p.m., in the Council Chambers, Room 240, Civic Center
PROPERTY LOCATION:	6719 Devon Ave SE - 97306
OWNER/ APPLICANT (S):	HSF Development, LLC (Member – Kelley D. Hamilton Managers – Kelley D. Hamilton, Chris Jundt, Anthony Kreitzberg)
APPELLANT(S):	HSF Development, LLC (Member – Kelley D. Hamilton Managers – Kelley D. Hamilton, Chris Jundt, Anthony Kreitzberg)
AGENT(S):	Mark Grenz P.E. for Multi Tech Engineering
REPRESENTATIVE(S):	Alan Sorem for Saalfeld Griggs, PC
DESCRIPTION OF REQUEST:	<p>Appeal of the Planning Administrator's decision on an Urban Growth Preliminary Declaration request to determine the public facilities and infrastructure required to develop 19.89 acres at 6719 Devon Avenue SE.</p> <p>Request: An Urban Growth Preliminary Declaration request to determine the public facilities and infrastructure required to develop 19.89 acres designated DR (Developing Residential) in the Salem Area Comprehensive Plan, zoned Marion County UT-10 (Urban Transition - 10 Acres), and located at 6719 Devon Avenue SE 97306 (Marion County Assessor map and tax lot number 083W22C00300). The applicant has submitted a concurrent application to annex the property, which would be zoned City of Salem RA (Residential Agriculture) or RS (Single Family Residential) upon annexation.</p>
BASIS OF APPEAL	See attached letter of appeal.
CRITERIA TO BE CONSIDERED:	<p><u>URBAN GROWTH PRELIMINARY DECLARATION (UGA Permit)</u></p> <p>Pursuant to SRC 200.025(d) and (e), the Director shall review a completed application for an Urban Growth Preliminary Declaration in light of the applicable provisions of the Master Plans and the Area Facility Plans and determine:</p> <ol style="list-style-type: none">(1) The required facilities necessary to fully serve the development;(2) The extent to which the required facilities are in place or fully committed. <p>The Urban Growth Preliminary Declaration shall list all required facilities necessary to fully serve the development and their timing and phasing which the developer must construct as conditions of any subsequent land use approval for the development.</p>

HOW TO PROVIDE TESTIMONY:	Any person wishing to speak either for or against the proposed request may do so in person or by representative at the Public Hearing. Written comments may also be submitted at the Public Hearing. Include case number with the written comments. Prior to the Public Hearing, written comments may be filed with the Salem Planning Division, Community Development Department, 555 Liberty Street SE, Room 305, Salem, Oregon 97301. Only those participating at the hearing, in person or by submission of written testimony, have the right to appeal the decision.
HEARING PROCEDURE:	<p>The hearing will be conducted with the staff presentation first, followed by the proponent's case, neighborhood organization comments, appellant's case, persons opposed, other interested persons, rebuttal and surrebuttal. The applicant has the burden of proof to show that the approval criteria can be satisfied by the facts. Opponents may rebut the applicant's testimony by showing alternative facts or by showing that the evidence submitted does not satisfy the approval criteria.</p> <p>Failure to raise an issue prior to the close of the Public Hearing in person or in writing, or failure to provide statements or evidence with sufficient specificity to provide the applicant and Review Authority to respond to the issue, precludes appeal to the Land Use Board of Appeals (LUBA) on this issue. A similar failure to raise constitutional issues relating to proposed conditions of approval precludes an action for damages in circuit court.</p> <p>Following the close of the Public Hearing, a decision will be issued and mailed to the appellant, applicant, property owner, affected neighborhood associations, anyone who participated in the hearing, either in person or in writing, and anyone who requested to receive notice of the decision.</p>
CASE MANAGER:	Pamela Cole, Case Manager , City of Salem Planning Division, 555 Liberty Street SE, Room 305, Salem, Oregon 97301. Telephone: 503-540-2309; E-mail: pcole@cityofsalem.net .
NEIGHBORHOOD ORGANIZATION:	South Gateway Neighborhood Association, Glen Baly, Land Use Chair; Phone: (503) 588-6924; Email: glennbaly12345@gmail.com ; TJ Sullivan, Land Use Co-Chair; Phone: (503) 585-221; Email: tj@huggins.com .
DOCUMENTATION AND STAFF REPORT:	<p>Copies of the application and all documents and evidence submitted as part of the proceeding are available for inspection at no cost at the Planning Division office during regular business hours. Copies can be obtained at a reasonable cost.</p> <p>The Staff Report with recommendation to City Council will be available for inspection at no cost, and copies will be provided at reasonable cost, at least 7 days prior to the hearing at the Community Development Department, 555 Liberty Street SE, Room 305, Salem, Oregon 97301.</p> <p>The staff report will be posted on the City Council agenda website no later than 5:00 p.m. on May 22, 2018 at: https://salem.legistar.com/Calendar.aspx</p>
ACCESS:	The Americans with Disabilities Act (ADA) accommodations will be provided on request.
NOTICE MAILING DATE:	May 9, 2018

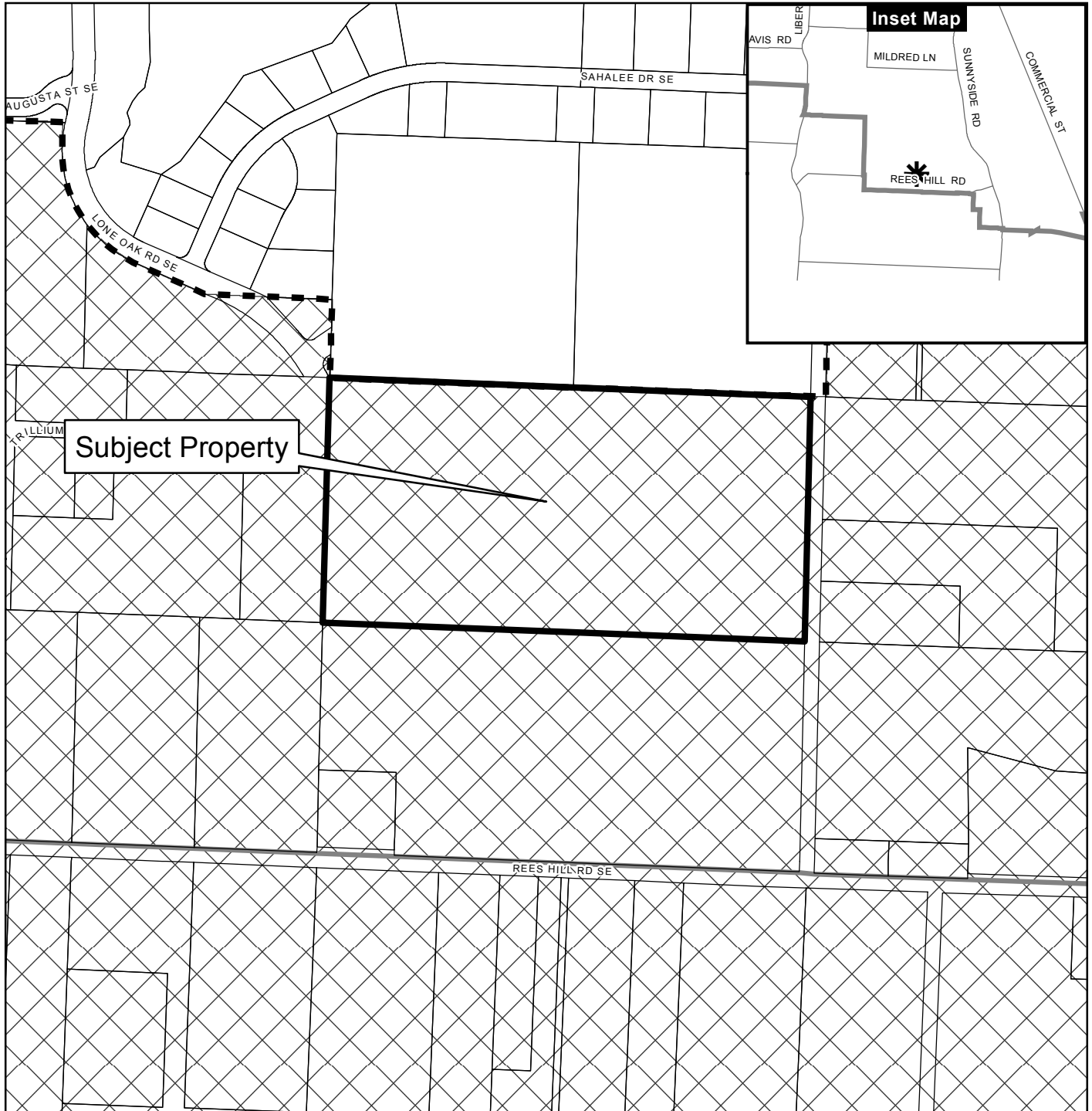
***PLEASE PROMPTLY FORWARD A COPY OF THIS NOTICE TO ANY OTHER OWNER, TENANT OR LESSEE.
For more information about Planning in Salem:
<http://www.cityofsalem.net/planning>***

It is the City of Salem's policy to assure that no person shall be discriminated against on the grounds of race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity and source of income, as provided by Salem Revised Code Chapter 97. The City of Salem also fully complies with Title VI of the Civil Rights Act of 1964, and related statutes and regulations, in all programs and activities. Disability-related modification or accommodation, including auxiliary aids or services, in order to participate in this meeting or event, are available upon request. Sign language and interpreters for languages other than English are also available upon request. To request such an accommodation or interpretation, contact the Community Development Department at 503-588-6173 at least three business days before this meeting or event.

TTD/TTY telephone 503-588-6439 is also available 24/7

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

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.

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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.

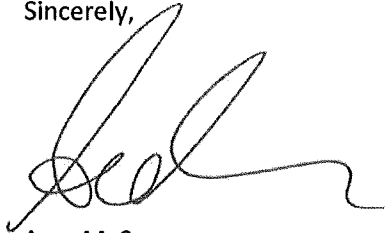
2. Condition of Approval No. 10 is unconstitutional under the Takings Clause of the Fifth Amendment of the United States Constitution and Article I, Section 18 of the Oregon Constitution. The impacts of the proposed development are limited to increasing the expected visits to the City's Parks Facilities 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