



## Staff Report

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**File #:** 18-224

**Version:** 1

**Date:** 5/29/2018

**Item #:** 4.a.

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**TO:** Mayor and City Council

**THROUGH:** Steve Powers, City Manager

**FROM:** Norman Wright, Community Development Director

### **SUBJECT:**

Appeal of the Planning Administrator's decision for Urban Growth Preliminary Declaration Case No. UGA17-06 for property located at 6719 Devon Avenue SE.

Ward(s): Ward 4

Councilor(s): McCoid

Neighborhood(s): South Gateway

### **ISSUE:**

Shall the City Council affirm, amend, or reverse the decision of the Planning Administrator for Urban Growth Preliminary Declaration Case No. UGA17-06?

### **RECOMMENDATION:**

AFFIRM the Planning Administrator's March 12, 2018 decision.

### **SUMMARY AND BACKGROUND:**

On March 12, 2018, the Planning Administrator adopted an order approving Urban Growth Preliminary Declaration Case No. UGA17-06 subject to 10 conditions of approval (**Attachment 2**). On March 23, 2018, the applicant appealed the Planning Administrator's decision, requesting the parks requirement be removed.

### **FACTS AND FINDINGS:**

#### Procedural Findings

1. On November 7, 2017, the applicant submitted an application for an Urban Growth Area Preliminary Declaration to determine the public facilities and infrastructure required to develop

- a 19.89-acre property at 6719 Devon Avenue SE (**Attachment 1**) into approximately 86 subdivision lots and submitted a concurrent application for annexation (Annexation Case No. ANXC-725). After the applicant submitted additional information, the Urban Growth Area Preliminary Declaration application was deemed complete for processing on December 18, 2017. The proposed annexation is scheduled for a public hearing on June 11, 2018.
2. Notice of Filing and a Request for Comments on the Urban Growth Area Preliminary Declaration were sent to the South Gateway Neighborhood Association and surrounding property owners pursuant to Salem Revised Code requirements on December 20, 2017.
  3. On March 12, 2018, the Planning Administrator issued a decision approving the proposed Urban Growth Preliminary Declaration subject to conditions of approval (**Attachment 2**).
  4. On March 23, 2018, the applicant submitted an appeal of the Planning Administrator's decision (**Attachment 3**). The appeal public hearing was delayed until the Lone Oak Reimbursement District, which this property is subject to, was decided. A public hearing before the City Council is scheduled for May 29, 2018.
  5. Notice of the public hearing was sent to South Gateway, surrounding property owners, and everyone who submitted comments on the proposal, pursuant to Salem Revised Code requirements, on May 9, 2018. Notice of the public hearing was posted on the subject property on May 15, 2018.
  6. The 120-day state mandated decision deadline for this case has been extended by 56 days, from April 17, 2018 to June 12, 2018.

#### Substantive Findings

7. Because the subject property is outside of the Urban Service Area, an Urban Growth Preliminary Declaration must be obtained prior to, or concurrent or consolidated with, any application for a subdivision. The application for an Urban Growth Preliminary Declaration is necessary to determine the public facilities required under the Urban Growth Management Program to develop a future subdivision. The applicant has not submitted a subdivision application.
9. The applicable criteria and considerations that must be satisfied for the consolidated application are found in SRC Chapter 200 (Urban Growth Management). Findings establishing conformance with the applicable approval criteria are included in the Planning Administrator's March 12, 2018 decision order (**Attachment 2**).
10. South Gateway did not submit comments in response to the December 20, 2017 Notice of Filing and Request for Comments. Comments were received from surrounding property owners generally concerning traffic congestion and safety, infrastructure, and stormwater runoff. The issues raised are summarized and addressed in the March 12, 2018 decision order (**Attachment 2**).

11. The applicant is appealing the parks requirements of the Urban Growth Preliminary Declaration. The appeal letter from the applicant's representative, Alan Sorem, (**Attachment 3**) requests removal of Condition of Approval No 10, which requires the applicant to either (a) convey or acquire 10 acres of property for dedication of neighborhood park facility NP-28 or (b) pay a temporary access fee of \$200,000 pursuant to SRC 200.080(a). Mr. Sorem states that the cost of complying with this condition would be grossly disproportionate to the impact from the proposed development.
12. The findings related to the park requirement can be found on page 10-11 of **Attachment 2**, including an analysis of the proportional share of the park cost that is required for the proposed residential development.

### **ALTERNATIVES**

11. The City Council may affirm, amend, or reverse the decision of the Planning Administrator for Urban Growth Preliminary Declaration Case No. UGA17-06.
  - I. **AFFIRM** the decision for UGA 17-06.
  - II. **MODIFY** the decision for UGA 17-06.
  - III. **DENY** the application.

### **RECOMMENDATION**

12. Based on the facts and findings within the March 12, 2018 decision, staff recommends that the City Council find that the proposed Urban Growth Preliminary Declaration satisfies the applicable approval criteria of SRC Chapter 200 and **AFFIRM** the decision of the Planning Administrator.

Pamela Cole  
Planner II

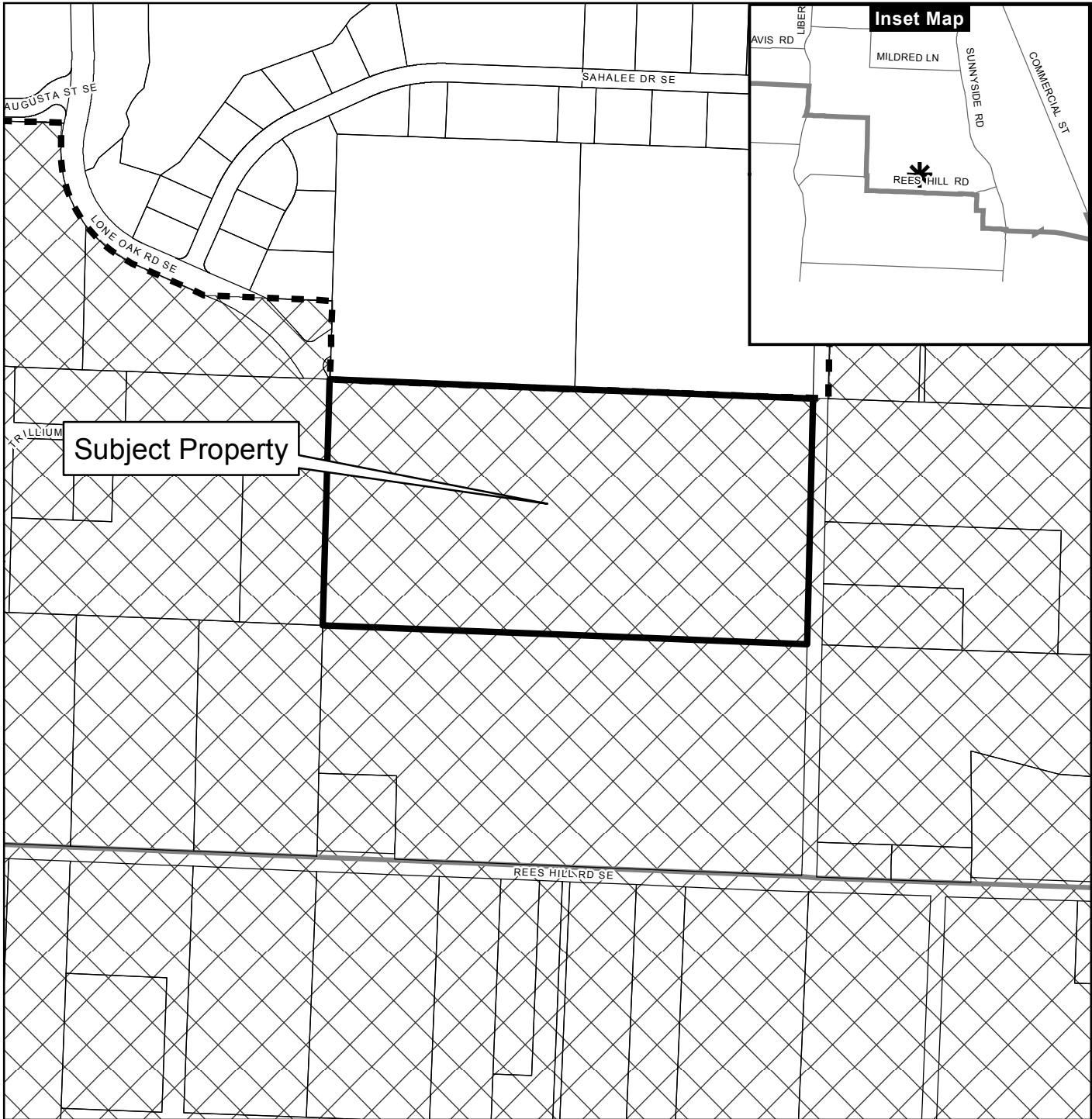
#### Attachments:

1. Vicinity Map
2. UGA17-06 Decision
3. Appeal Letter

05/17/2018

# 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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# NOTICE OF DECISION

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



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

## DECISION OF THE PLANNING ADMINISTRATOR

**URBAN GROWTH AREA PRELIMINARY DECLARATION CASE NO. UGA17-06**

**APPLICATION NO. : 17-121850-LD**

**NOTICE OF DECISION DATE: MARCH 12, 2018**

**SUMMARY:** An Urban Growth Preliminary Declaration request to determine the public facilities and infrastructure required to develop 19.89 acres at 6719 Devon Avenue SE.

**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.

**APPLICANT:** HSF Development, LLC (Member – Kelley D. Hamilton Managers – Kelley D. Hamilton, Chris Jundt, Anthony Kreitzberg)

**LOCATION:** 6719 Devon Avenue SE – 97306

**CRITERIA:** UGA Preliminary Declaration - SRC 200.025(d)(e)

**FINDINGS:** The Findings are attached in the Order dated March 12, 2018.

**DECISION:** The Planning Administrator **APPROVED** Urban Growth Preliminary Declaration Case No. UGA17-06 subject to the following conditions of approval:

- Condition 1:** Acquire and convey land for dedication of right-of-way to equal a width of 60 feet in an alignment approved by the Public Works Director as specified for the future Collector street in the Salem Transportation System Plan from the existing terminus of Lone Oak Road SE at Sahalee Drive SE to Rees Hill Road SE.
- Condition 2:** Construct Lone Oak Road SE with a minimum 34-foot-wide full Collector street improvement within the subject property and from the north line of the subject property to Sahalee Drive SE.
- Condition 3:** Construct Lone Oak Road SE with a minimum 34-foot-wide linking street improvement from the south line of the subject property to Rees Hill Road SE.

- Condition 4:** Pay the applicable reimbursement fee as established in the Lone Oak Road Reimbursement District pursuant to Resolution 2018-08 to contribute the development's proportional share of the costs of the full Collector street improvement of Lone Oak Road SE from Muirfield Avenue SE to Rees Hill Road SE (in the event the Reimbursement District is terminated prior to final plat approval, no reimbursement fee shall be due). The reimbursement fee shall be credited toward the performance guarantee amount required in SRC 110.100(c) for Lone Oak Road SE construction.
- Condition 5:** Convey land for dedication along the entire frontage of Devon Avenue SE to equal 30 feet from centerline.
- Condition 6:** Construct a half-street improvement to local street standards along the entire frontage of Devon Avenue SE.
- Condition 7:** Construct 8-inch *Salem Wastewater Management Master Plan* sewer lines necessary to serve the development. The nearest available sewer main appears to be located at the terminus of Lone Oak Road SE at Sahalee Drive SE.
- Condition 8:** As a condition of development within the S-3 water service area, the applicant shall construct the following facilities as specified in the Water System Master Plan and approved by the Public Works Director:
- a. A 12-inch S-3 main in the portion of Lone Oak Road SE within the subject property.
  - b. A 12-inch S-3 main connecting east/west through the property from Lone Oak Road SE to Devon Avenue SE.
  - c. A 12-inch S-3 main along the entire frontage of Devon Avenue SE.
  - d. A 12-inch S-3 main in Lone Oak Road SE from the north line of the subject property to the existing main at the Lone Oak/Sahalee intersection and/or from the south line of the subject property to the existing main in Rees Hill Road SE.
- Condition 9:** As a condition of development within the S-4 water service area, the applicant shall construct the following facilities as specified in the Water System Master Plan and approved by the Public Works Director:
- a. An S-4 domestic pump station with sufficient capacity to serve entire the S-4 water service area between Lone Oak Road SE and Devon Avenue SE.
  - b. An 8-inch S-4 main from the pump station to the S-4 water service area within the subject property.
  - c. One or more 8-inch S-4 mains to serve each lot within the S-4 service area.
  - d. An 8-inch S-4 main extended to the south line of the subject property.
  - e. One or more S-3 mains that provide adequate fire flow to the entire

S-4 area.

- Condition 10:** The applicant has two options for providing parks facilities to serve the subject property:
- a. Convey or acquire 10 acres of property for dedication of neighborhood park facility NP-28; or
  - b. Pay a temporary access fee of \$200,000 pursuant to SRC 200.080(a).

The rights granted by the attached decision must be exercised, or an extension granted, by **March 28, 2020** or this approval shall be null and void.

Application Deemed Complete:	<u>December 18, 2017</u>
Notice of Decision Mailing Date:	<u>March 12, 2018</u>
Decision Effective Date:	<u>March 28, 2018</u>
State Mandate Date:	<u>May 17, 2018</u>

Case Manager: Pamela Cole, [pcole@cityofsalem.net](mailto:pcole@cityofsalem.net)

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., **Tuesday, March 27, 2018**. 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 200. 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 City Council will review the appeal at a public hearing. After the hearing, the Salem City Council may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

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

<http://www.cityofsalem.net/planning>

**BEFORE THE PLANNING ADMINISTRATOR  
OF THE CITY OF SALEM  
(URBAN GROWTH PRELIMINARY DECLARATION NO. UGA17-06)**

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

<http://www.cityofsalem.net/planning>

<b>IN THE MATTER OF THE</b>	)	
<b>APPROVAL OF URBAN GROWTH</b>	)	<b>FINDINGS AND ORDER</b>
<b>PRELIMINARY DECLARATION NO.</b>	)	<b>MARCH 12, 2018</b>
<b>UGA17-06; 6719 DEVON AVE SE</b>	)	

**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.

**DECISION**

The Urban Growth Preliminary Declaration is **APPROVED** subject to the applicable standards of the Salem Revised Code, the findings contained herein, and the following conditions of approval:

- Condition 1:** Acquire and convey land for dedication of right-of-way to equal a width of 60 feet in an alignment approved by the Public Works Director as specified for the future Collector street in the Salem Transportation System Plan from the existing terminus of Lone Oak Road SE at Sahalee Drive SE to Rees Hill Road SE.
- Condition 2:** Construct Lone Oak Road SE with a minimum 34-foot-wide full Collector street improvement within the subject property and from the north line of the subject property to Sahalee Drive SE.
- Condition 3:** Construct Lone Oak Road SE with a minimum 34-foot-wide linking street improvement from the south line of the subject property to Rees Hill Road SE.
- Condition 4:** Pay the applicable reimbursement fee as established in the Lone Oak Road Reimbursement District pursuant to Resolution 2018-08 to contribute the development's proportional share of the costs of the full Collector street improvement of Lone Oak Road SE from Muirfield Avenue SE to Rees Hill Road SE (in the event the Reimbursement District is terminated prior to final plat approval, no reimbursement fee shall be due). The reimbursement fee shall be credited toward the



performance guarantee amount required in SRC 110.100(c) for Lone Oak Road SE construction.

- Condition 5:** Convey land for dedication along the entire frontage of Devon Avenue SE to equal 30 feet from centerline.
- Condition 6:** Construct a half-street improvement to Local street standards along the entire frontage of Devon Avenue SE.
- Condition 7:** Construct 8-inch *Salem Wastewater Management Master Plan* sewer lines necessary to serve the development. The nearest available sewer main appears to be located at the terminus of Lone Oak Road SE at Sahalee Drive SE.
- Condition 8:** As a condition of development within the S-3 water service area, the applicant shall construct the following facilities as specified in the Water System Master Plan and approved by the Public Works Director:
- a. A 12-inch S-3 main in the portion of Lone Oak Road SE within the subject property.
  - b. A 12-inch S-3 main connecting east/west through the property from Lone Oak Road SE to Devon Avenue SE.
  - c. A 12-inch S-3 main along the entire frontage of Devon Avenue SE.
  - d. A 12-inch S-3 main in Lone Oak Road SE from the north line of the subject property to the existing main at the Lone Oak/Sahalee intersection and/or from the south line of the subject property to the existing main in Rees Hill Road SE.
- Condition 9:** As a condition of development within the S-4 water service area, the applicant shall construct the following facilities as specified in the Water System Master Plan and approved by the Public Works Director:
- a. An S-4 domestic pump station with sufficient capacity to serve entire the S-4 water service area between Lone Oak Road SE and Devon Avenue SE.
  - b. An 8-inch S-4 main from the pump station to the S-4 water service area within the subject property.
  - c. One or more 8-inch S-4 mains to serve each lot within the S-4 service area.
  - d. An 8-inch S-4 main extended to the south line of the subject property.
  - e. One or more S-3 mains that provide adequate fire flow to the entire S-4 area.
- Condition 10:** The applicant has two options for providing parks facilities to serve the subject property:

- a. Convey or acquire 10 acres of property for dedication of neighborhood park facility NP-28; or
- b. Pay a temporary access fee of \$200,000 pursuant to SRC 200.080(a).

## **PROCEDURAL FINDINGS**

On November 7, 2017, an application for an Urban Growth Preliminary Declaration was filed to determine the public facilities required for single family residential development on property approximately 19.89 acres in size, designated DR (Developing Residential), zoned Marion County UT-10 (Urban Transition – 10 Acres), and located at 6719 Devon Avenue SE (**Attachment A**). The application was deemed complete on December 18, 2017, and notice was mailed pursuant to Salem Revised Code (SRC) requirements on December 20, 2017. The applicant has granted one 30 day extension to the State mandated decision date.

## **SUBSTANTIVE FINDINGS**

### **1. Subject Property**

The subject property consists of one tax lot encompassing a total area of 19.89 acres.

The site is located outside of and abutting Salem city limits. The applicant has applied for annexation, and the annexation (Annexation C-725) will be reviewed by City Council later this year. The parcel has frontage on Devon Avenue SE on the east side, and the Salem Area Transportation Systems Plan (TSP) indicates a future collector street (Lone Oak Road SE) on and near the western boundary of the parcel. The subject property includes one single family dwelling.

The site is designated “Developing Residential” in the Comprehensive Plan and zoned UT-10 (Urban Transition – 10 Acres) in Marion County. Upon annexation, the property would be zoned RA (Residential Agriculture) or RS (Single Family Residential). The applicant provided a draft subdivision plan that indicates that the subject property could be developed for approximately 86 single family residential lots after annexation. This draft subdivision plan is not being reviewed or approved with this UGA Preliminary Declaration application. Any future subdivision application would be reviewed after the UGA Preliminary Declaration is issued and after the property is annexed.

### **2. SRC Chapter 200 – Urban Growth Management**

The subject property is located outside of the City’s Urban Service Area. Pursuant to the Urban Growth Management requirements contained under SRC Chapter 200, an Urban Growth Preliminary Declaration is required prior to subdivision approval for a residential or commercial subdivision, or application for a building permit for any development where no subdivision is contemplated, if the development is within the Urban Growth Area (UGA), or is within the Urban Service Area (USA), but precedes city construction of required facilities shown in the adopted capital improvement plan, public facilities plan, or comparable plan for the area of the development.

### 3. Neighborhood Association Comments

The subject property is located within the boundaries of the South Gateway Neighborhood Association. The neighborhood association did not submit comments on the proposal prior to the comment deadline.

### 4. Citizen Comments

Property owners within 250 feet of the subject property were mailed notification of the Urban Growth Preliminary Declaration request.

One property owner requested that staff inform him of the impact of the proposal on his adjacent property at 671 and 681 Rees Hill Road SE.

**Staff Response:** The conditions of approval would require acquisition and conveyance of land for dedication of right-of-way of Lone Oak Road SE from the subject property to Rees Hill Road SE. The exact location of this right-of-way has not been determined, but the alignment could impact 671 and/or 681 Rees Hill Road SE. The applicant would be responsible for acquiring the land from other property owners pursuant to SRC 200.050.

Six property owners submitted comments indicating the following objections and concerns:

#### Streets

- A single point of access via Devon Avenue SE is dangerous, and the Lone Oak Road SE bridge should be completed as an alternate route prior to development or with this development.
- The proposal would increase traffic beyond reasonable capacity of existing county roads (Devon Avenue SE and Rees Hill Road SE).
- The proposal should require a traffic control light at intersection of Rees Hill Road SE and Sunnyside Road SE.
- The proposal would degrade the road surface on Rees Hill Road SE.
- The proposal would adversely impact safety for motor vehicles, bicycles, and pedestrians on Devon Avenue SE and Rees Hill Road SE.
- The proposal should include sidewalks on Devon Avenue SE and Rees Hill Road SE.
- The proposed intersections of Lone Oak Road SE at Rees Hill Road SE and the proposed subdivision street at Devon Avenue SE would be hazardous.

#### Water, Sewer, and Stormwater

- No connection is available to the city sewer system.
- No connection is available to the city water system.
- The proposal could contaminate well water.
- Storm water runoff could adversely affect neighboring properties.

**Staff Response:** The Urban Growth Preliminary Declaration determines the master-planned public facilities needed to fully service development of property outside of the Urban Service Area, but does not confer an approval to develop land. Future development of the subject property would be subject to the land use and/or development review processes applicable to the type of development proposed. For instance, single family residential development would be subject to review under the tentative subdivision criteria.

### Streets

A more specific analysis of trip generation and traffic safety would be undertaken as part of the review of future development.

Conditions of approval adopted in this order require acquisition and conveyance of land for dedication of rights-of-way of Lone Oak Road SE from Sahalee Drive SE to Rees Hill Road SE; construction of improvements on Lone Oak Road SE from Sahalee Drive SE to Rees Hill Road SE; conveyance of land for right-of-way along the property frontage on Devon Avenue SE; and construction of improvements along the property frontage on Devon Avenue SE.

Another condition in this order requires that the development pay a reimbursement fee for the Lone Oak Road Reimbursement District to contribute a proportional share of costs of the full collector street improvement of Lone Oak Road SE to Muirfield Avenue SE, including the bridge.

### Water, Sewer, and Stormwater

The conditions of approval adopted in this order require adequate linking facilities to water and sewer facilities. Water, sewer, and stormwater facilities will be provided at the time of development according to the requirements of the Salem Revised Code and Public Works standards.

## **5. City Department Comments**

**Public Works Department** - The Public Works Department reviewed the proposal and provided comments regarding existing and required public facilities necessary to serve the subject property. Comments from the Public Works Department are included as **Attachment B**.

**Building and Safety Division** – The Salem Community Development Department, Building and Safety Division, submitted no comments.

**Fire Department** – The Salem Fire Department submitted comments indicating that two remotely separate access points will be required, and fire hydrants will be required.

## **6. Public and Private Agency Comments**

**Salem-Keizer Public Schools** – Planning and Property Services staff for the school district reviewed the proposal and submitted comments indicating that sufficient school capacity exists to serve future single family residential development of the property at the middle school level but not at the elementary and high school levels. The school district indicated that the subject property is outside of the “walk zone” of the assigned elementary, middle, and high schools and that students residing within the development would be eligible for bus transportation to assigned schools.

## **7. Criteria for Granting Urban Growth Preliminary Declaration**

Salem Revised Code (SRC) 200.025(d) & (e) set forth the applicable criteria that must be met before approval can be granted to an Urban Growth Preliminary Declaration. The following subsections are organized with approval criteria shown in ***bold italic***, followed by findings identifying those public facilities that are currently in place and those that must be constructed as a condition of the Urban Growth Preliminary Declaration in order to fully serve the development in conformance with the City’s adopted Master Plans and Area Facility Plans.

**A. SRC 200.025(d): *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:***

***(1) The required facilities necessary to fully serve the development;***

***(2) The extent to which the required facilities are in place or fully committed.***

**B. SRC 200.025(e): *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.***

**Finding:** The Public Works Department reviewed the proposed Urban Growth Preliminary Declaration to identify those public facilities that must be constructed in order to fully serve the proposed development consistent with the City’s adopted Master Plans and Area Facilities Plans. Findings provided by the Public Works Department are included in **Attachment B**. The proposed development will be fully served by Public Facilities as required under SRC Chapter 200 as follows:

**I. SRC 200.055 – Street Improvements.**

SRC 200.055 requires development to be connected, through a linking street, to an adequate public street. An adequate linking street is defined under SRC 200.055(b) as the nearest point on a street that has a minimum 60-foot-wide right-of-way with a minimum 30-foot improvement for Local streets or a minimum 34-foot improvement for Major streets (SRC 200.055(b)).

All streets abutting the boundary of a property shall be designed to the greater of the standards of SRC Chapter 803 and the standards of linking streets in SRC 200.055(b).

The subject property has frontage on Devon Avenue SE on the east. A future extension of Lone Oak Road SE is planned at the western property line of the subject property.

Devon Avenue SE is designated as a Local street in the Salem Transportation System Plan (TSP) and is currently under Marion County jurisdiction. The standard for this street classification is a 30-foot-wide improvement within a 60-foot-wide right-of-way. This street currently has an approximate 26-foot-wide improvement within a 40-foot-wide right-of-way abutting the subject property.

Lone Oak Road SE is designated as a Collector street in the Salem Transportation System Plan (TSP) and is currently under Marion County jurisdiction. The standard for this street classification is a 34-foot-wide improvement within a 60-foot-wide right-of-way. This street terminates near Sahalee Drive SE northwest of the subject property.

The applicant shall construct the Salem Transportation System Master Plan improvements and link the site to existing facilities that are defined as adequate under SRC 200.005(a), as conditioned below.

City Council approved the Lone Oak Reimbursement District under Resolution 2018-08 on January 22, 2018. This district provides a funding mechanism for completion of Lone Oak Road SE from Muirfield Avenue SE to Rees Hill Road SE so that all benefited properties pay a proportional share of the cost for street improvements.

Three conditions of approval are proposed related to Lone Oak Road SE:

- Condition 1:** Acquire and convey land for dedication of right-of-way to equal a width of 60 feet in an alignment approved by the Public Works Director as specified for the future Collector street in the Salem Transportation System Plan from the existing terminus of Lone Oak Road SE at Sahalee Drive SE to Rees Hill Road SE.
- Condition 2:** Construct Lone Oak Road SE with a minimum 34-foot-wide full Collector street improvement within the subject property and from the north line of the subject property to Sahalee Drive SE.

**Condition 3:** Construct Lone Oak Road SE with a minimum 34-foot-wide linking street improvement from the south line of the subject property to Rees Hill Road SE.

These conditions of approval ensure that the proposed development has an adequate linking street connection to Lone Oak Road SE at Sahalee Drive SE and secondary linking street connections to Rees Hill Road SE through Devon Avenue SE and Lone Oak Road SE.

Pursuant to Resolution 2018-08, the applicant is also required to pay the applicable reimbursement fee as established in the Lone Oak Road Reimbursement District for the development's proportional share of the costs of the full Collector street improvement of Lone Oak Road SE from Muirfield Avenue SE to Rees Hill Road SE. (In the event the Reimbursement District is terminated prior to final plat approval, no reimbursement fee shall be due). The reimbursement fee shall be credited toward the performance guarantee amount required in SRC 110.100(c) for Lone Oak Road construction.

**Condition 4:** Pay the applicable reimbursement fee as established in the Lone Oak Road Reimbursement District pursuant to Resolution 2018-08 to contribute the development's proportional share of the costs of the full Collector street improvement of Lone Oak Road SE from Muirfield Avenue SE to Rees Hill Road SE (in the event the Reimbursement District is terminated prior to final plat approval, no reimbursement fee shall be due). The reimbursement fee shall be credited toward the performance guarantee amount required in SRC 110.100(c) for Lone Oak Road construction.

Boundary street improvements are required along the entire frontage of Devon Avenue pursuant to SRC 200.055(c).

**Condition 5:** Convey land for dedication along the entire frontage of Devon Avenue SE to equal 30 feet from centerline.

**Condition 6:** Construct a half-street improvement to Local street standards along the entire frontage of Devon Avenue SE.

## ***II. SRC 200.060 – Sewer Improvements.***

SRC 200.060 requires development to be linked to existing adequate sewer facilities through construction of sewer lines and pumping stations necessary to connect to such existing sewer facilities. The Public Works Department has identified the nearest available sewer facility as located in Sahalee Drive SE, both northwest and northeast of the subject property.

The applicant shall construct the *Salem Wastewater Management Master Plan* improvements and link the site to existing facilities that are defined as adequate under SRC 200.005(a), as conditioned below:

**Condition 7:** Construct 8-inch *Salem Wastewater Management Master Plan* sewer lines necessary to serve the development. The nearest available sewer main appears to be located at the terminus of Lone Oak Road SE at Sahalee Drive SE.

As a condition of sewer service, all developments will be required to provide public sewers to adjacent upstream parcels. This shall include the extension of sewer mains in easements or rights-of-way across the property to adjoining properties, and across the street frontage of the property to adjoining properties when the main is located in the street right-of-way. This shall include trunk sewers that are oversized to provide capacity for upstream development (PWDS Sewer Division 003).

### ***III. SRC 200.065 – Storm Drainage Improvements.***

SRC 200.065 requires development to be linked to existing adequate storm drainage facilities through the construction of storm drain lines, open channels, and detention facilities that are necessary to connect to such existing storm drainage facilities. The Public Works Department has stated that the nearest available public storm system appears to be Champion Swale to the west and county ditches along Devon Avenue SE to the east of the subject property. The applicant shall link the on-site system to existing facilities that are defined as adequate under SRC 200.005(a).

### ***IV. SRC 200.070 – Water Improvements.***

SRC 200.070 requires development to be linked to existing adequate water service facilities through the construction of water distribution lines, reservoirs, and pumping stations that are necessary to connect to such existing water service facilities. The applicant shall provide linking water mains consistent with the *Water System Master Plan* adequate to convey fire flows to serve the proposed development as specified in the Water Distribution Design Standards.

Comments from the Public Works Department indicate the subject property is located within the S-3 and S-4 water service levels and that the nearest adequate S-3 water mains are located in Devon Avenue SE, Lone Oak Road SE, and Rees Hill Road SE. No S-4 water facilities exist. The applicant shall link the on-site system to existing facilities that are defined as adequate under SRC 200.005(a), as conditioned below.

**Condition 8:** As a condition of development within the S-3 water service area, the applicant shall construct the following facilities as specified in the Water System Master Plan and approved by the Public Works Director:



- a. A 12-inch S-3 main in the portion of Lone Oak Road SE within the subject property.
- b. A 12-inch S-3 main connecting east/west through the property from Lone Oak Road SE to Devon Avenue SE.
- c. A 12-inch S-3 main along the entire frontage of Devon Avenue SE.
- d. A 12-inch S-3 main in Lone Oak Road SE from the north line of the subject property to the existing main at the Lone Oak/Sahalee intersection and/or from the south line of the subject property to the existing main in Rees Hill Road SE.

Based on the topography of the subject property, the S-4 area of the proposed development shall receive domestic service from the S-4 service level and fire service from the S-3 service level.

**Condition 9:** As a condition of development within the S-4 water service area, the applicant shall construct the following facilities as specified in the Water System Master Plan and approved by the Public Works Director:

- a. An S-4 domestic pump station with sufficient capacity to serve entire the S-4 water service area between Lone Oak Road SE and Devon Avenue SE.
- b. An 8-inch S-4 main from the pump station to the S-4 water service area within the subject property.
- c. One or more 8-inch S-4 mains to serve each lot within the S-4 service area.
- d. An 8-inch S-4 main extended to the south line of the subject property.
- e. One or more S-3 mains that provide adequate fire flow to the entire S-4 area.

These improvements ensure that permanent water service is available in accordance with the Water System Master Plan.

#### ***V. SRC 200.075 – Park Sites.***

SRC 200.075 requires that the applicant shall reserve for dedication prior to development approval that property within the development site that is necessary for an adequate neighborhood park, access to such park, and recreation routes, or similar uninterrupted linkages, based upon the Salem Comprehensive Parks System Master Plan.

Limited parks facilities are available to serve the proposed development. The Comprehensive Parks System Master Plan shows that a future Neighborhood Park (NP 28) and Community Park (CP 6) are planned on or near the subject property. The applicant shall reserve property for dedication of neighborhood park facility NP-28 based on sizing criteria established in SRC 200.075(b).

The park sizing methodology is as follows:

- The park size shall be 2.25 acres per 1,000 population (SRC 200.075(b))
- The park service area is 300 acres based on the area of residentially zoned property that can be served based on the proposed park spacing in the Master Plan.
- Single-family residential development density is 6.3 dwelling units per net acre (Table 5 of draft Salem Housing Needs Analysis dated December 2014).
- According to the U.S. Census, the average household size in Salem in 2010 was 2.55 people (p16 of draft Salem Housing Needs Analysis dated December 2014).

The park size is 10 acres based on 2.55 people per dwelling multiplied by 6.3 dwellings per acre multiplied by 300 acres of park service area multiplied by 2.25 acres of park size per 1,000 population.

In lieu of acquiring or conveying park land pursuant to SRC 200.075, the applicant has the option of paying a temporary access fee pursuant to SRC 200.080(a). The temporary access fee is a reasonable alternative to conveyance of park land from within the subject property because the topography and location of the subject property is not desirable for a neighborhood park. The temporary access fee amount is \$200,000 based on the following analysis:

- Acquisition and development of a 10-acre park is estimated to cost a total of \$3,000,000 according to Table E-1 of the Master Plan.
- The service area of NP-28 is estimated to be 300 acres, so the proportional cost for all property within the service area is \$10,000 per acre.
- For a 20-acre site at \$10,000 per acre, the proportional contribution to NP-28 is \$200,000.

The temporary access fee will contribute to the permanent park facility by providing revenue for acquiring and developing the property being proposed for NP-28.

The applicant shall reserve for dedication prior to development approval that property within the development site that is necessary for an adequate neighborhood park, as defined in SRC 200.075(b), as conditioned below:

- Condition 10:** The applicant has two options for providing parks facilities to serve the subject property:
- a. Convey or acquire 10 acres of property for dedication of neighborhood park facility NP-28; or
  - b. Pay a temporary access fee of \$200,000 pursuant to SRC 200.080(a).

## 8. Conclusion

Based upon review of SRC Chapter 200, the findings contained herein, and due consideration of the comments received, the Urban Growth Preliminary Declaration complies with the requirements for an affirmative decision.

### IT IS HEREBY ORDERED

The 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) is hereby GRANTED subject to SRC Chapter 200 and the following conditions of approval:

- Condition 1:** Acquire and convey land for dedication of right-of-way to equal a width of 60 feet in an alignment approved by the Public Works Director as specified for the future Collector street in the Salem Transportation System Plan from the existing terminus of Lone Oak Road SE at Sahalee Drive SE to Rees Hill Road SE.
- Condition 2:** Construct Lone Oak Road SE with a minimum 34-foot-wide full Collector street improvement within the subject property and from the north line of the subject property to Sahalee Drive SE.
- Condition 3:** Construct Lone Oak Road SE with a minimum 34-foot-wide linking street improvement from the south line of the subject property to Rees Hill Road SE.
- Condition 4:** Pay the applicable reimbursement fee as established in the Lone Oak Road Reimbursement District pursuant to Resolution 2018-08 to contribute the development's proportional share of the costs of the full Collector street improvement of Lone Oak Road SE from Muirfield Avenue SE to Rees Hill Road SE (in the event the Reimbursement District is terminated prior to final plat approval, no reimbursement fee shall be due). The reimbursement fee shall be credited toward the performance guarantee amount required in SRC 110.100(c) for Lone Oak Road SE construction.
- Condition 5:** Convey land for dedication along the entire frontage of Devon Avenue SE to equal 30 feet from centerline.
- Condition 6:** Construct a half-street improvement to local street standards along the entire frontage of Devon Avenue SE.
- Condition 7:** Construct 8-inch *Salem Wastewater Management Master Plan* sewer lines necessary to serve the development. The nearest available

sewer main appears to be located at the terminus of Lone Oak Road SE at Sahalee Drive SE.

**Condition 8:** As a condition of development within the S-3 water service area, the applicant shall construct the following facilities as specified in the Water System Master Plan and approved by the Public Works Director:

- a. A 12-inch S-3 main in the portion of Lone Oak Road SE within the subject property.
- b. A 12-inch S-3 main connecting east/west through the property from Lone Oak Road SE to Devon Avenue SE.
- c. A 12-inch S-3 main along the entire frontage of Devon Avenue SE.
- d. A 12-inch S-3 main in Lone Oak Road SE from the north line of the subject property to the existing main at the Lone Oak/Sahalee intersection and/or from the south line of the subject property to the existing main in Rees Hill Road SE.

**Condition 9:** As a condition of development within the S-4 water service area, the applicant shall construct the following facilities as specified in the Water System Master Plan and approved by the Public Works Director:

- a. An S-4 domestic pump station with sufficient capacity to serve entire the S-4 water service area between Lone Oak Road SE and Devon Avenue SE.
- b. An 8-inch S-4 main from the pump station to the S-4 water service area within the subject property.
- c. One or more 8-inch S-4 mains to serve each lot within the S-4 service area.
- d. An 8-inch S-4 main extended to the south line of the subject property.
- e. One or more S-3 mains that provide adequate fire flow to the entire S-4 area

**Condition 10:** The applicant has two options for providing parks facilities to serve the subject property:

- a. Convey or acquire 10 acres of property for dedication of neighborhood park facility NP-28; or
- b. Pay a temporary access fee of \$200,000 pursuant to SRC 200.080(a).



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Lisa Anderson-Ogilvie, AICP  
Planning Administrator

Attachments: A. Vicinity Map  
B. Salem Public Works Department Comments

Application Deemed Complete:	<u>December 18, 2017</u>
Notice of Decision Mailing Date:	<u>March 12, 2018</u>
Decision Effective Date:	<u>March 28, 2018</u>
State Mandated Decision Date:	<u>May 17, 2018</u>

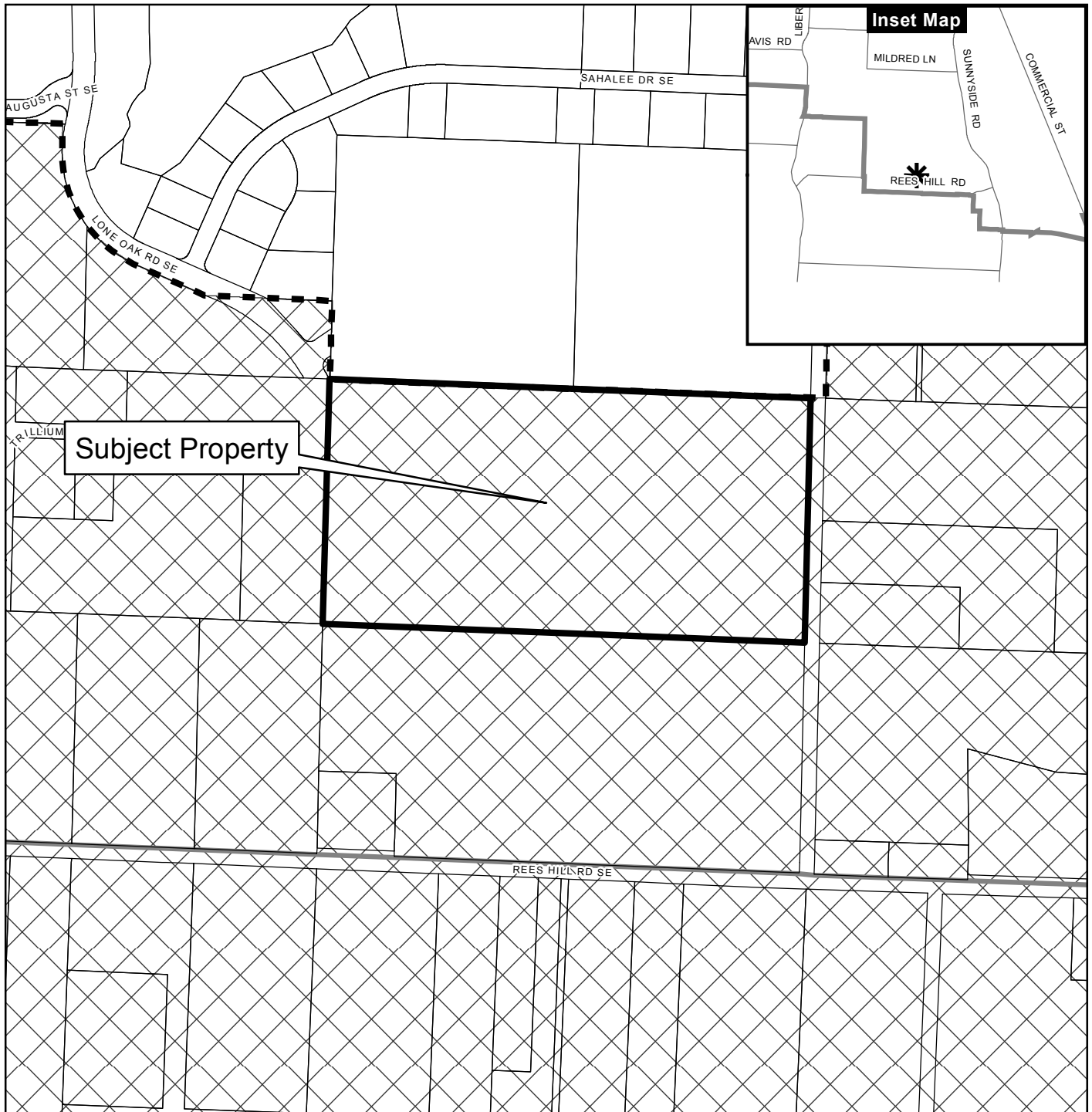
The rights granted by this decision must be exercised, or an extension granted, by **March 28, 2020** or this approval shall be null and void.

A copy of the complete Case File is available for review during regular business hours at the Planning Division office, 555 Liberty Street SE, Room 305, Salem OR 97301.

This decision is final unless written appeal from a party with standing to appeal, along with the appeal fee, is filed with the City of Salem Planning Division, Room 305, 555 Liberty Street SE, Salem, Oregon 97301, no later than **Tuesday, March 27, 5:00 p.m.** The notice of appeal must contain the information required by SRC 300.1020. The notice of 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 notice of appeal is untimely and/or lacks the proper fee, the notice of appeal will be rejected. The Salem City Council will review the appeal at a public hearing. The City Council may amend, rescind, or affirm the action or refer the matter to staff for additional information.

# 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.

This product is provided as is, without warranty. In no event is the City of Salem liable for damages from the use of this product. This product is subject to license and copyright limitations and further distribution or resale is prohibited.



# MEMO

**TO:** Pamela Cole, Planner II  
Community Development Department

**FROM:** Glenn J. Davis, PE, CFM, Chief Development Engineer  
Public Works Department

**DATE:** March 9, 2018

**SUBJECT:** **PUBLIC WORKS RECOMMENDATIONS**  
**UGA FOR PRELIMINARY DECLARATION 17-06**  
**6719 DEVON AVENUE SE**  
**FUTURE SUBDIVISION**

## PROPOSAL

**Summary:** An Urban Growth Preliminary Declaration request to determine the public facilities and infrastructure required to develop 19.89 acres at 6719 Devon Avenue SE.

**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 (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.

## RECOMMENDED CONDITIONS

1. Acquire and convey land for dedication of right-of-way to equal a width of 60 feet in an alignment approved by the Public Works Director as specified for the future Collector street in the Salem Transportation System Plan (TSP) from the existing terminus of Lone Oak Road SE at Sahalee Drive SE to Rees Hill Road SE.
2. Construct Lone Oak Road SE with a minimum 34-foot-wide full Collector street improvement within the subject property and from the north line of the subject property to Sahalee Drive SE.
3. Construct Lone Oak Road SE with a minimum 34-foot-wide linking street improvement from the south line of the subject property to Rees Hill Road SE.
4. Pay the applicable reimbursement fee as established in the Lone Oak Road



- b. An 8-inch S-4 main from the pump station to the S-4 water service area within the subject property.
  - c. One or more 8-inch S-4 mains to serve each lot within the S-4 service area.
  - d. An 8-inch S-4 main extended to the south line of the subject property.
  - e. One or more S-3 mains that provide adequate fire flow to the entire S-4 area
10. The applicant has two options for providing parks facilities to serve the subject property:
- a. Convey or acquire 10 acres of property for dedication of neighborhood park facility NP-28; or
  - b. Pay a temporary access fee of \$200,000 pursuant to SRC 200.080(a).

## **FACTS**

### **Streets**

#### **1. Lone Oak Road SE**

- a. Standard—This street is currently under Marion County jurisdiction and is designated as a Collector street in the Salem TSP. The standard for this street classification is a 34-foot-wide improvement within a 60-foot-wide right-of-way.
- b. Existing Condition—This street terminates near Sahalee Drive SE northwest of the subject property.

#### **2. Devon Avenue SE**

- a. Standard—This street is currently under Marion County jurisdiction and is designated as a Local street in the Salem TSP. The standard for this street classification is a 30-foot-wide improvement within a 60-foot-wide right-of-way.
- b. Existing Condition—This street has an approximate 26-foot improvement within a 40-foot-wide right-of-way abutting the subject property.



## **Parks**

The Comprehensive Parks System Master Plan shows that the subject property will be served by a future Neighborhood Park (NP 28).

## **CRITERIA AND FINDINGS**

### **SRC 200.055—Standards for Street Improvements**

**Findings:** An adequate linking street is defined as the nearest point on a street that has a minimum 60-foot-wide right-of-way with a minimum 30-foot improvement for Local streets or a minimum 34-foot improvement for Major streets (SRC 200.055(b)). All streets abutting the property boundaries shall be designed to the greater of the standards of SRC Chapter 803 and the standards of linking streets in SRC 200.055(b).

City Council approved the Lone Oak Reimbursement District under Resolution 2018-08 on January 22, 2018. This district provides a funding mechanism for completion of Lone Oak Road SE from Muirfield Avenue SE to Rees Hill Road SE so that all benefited properties pay a proportional share of the cost for street improvements.

Three conditions of approval are proposed related to Lone Oak Road SE:

1. Acquire and convey land for dedication of right-of-way to equal a width of 60 feet in an alignment approved by the Public Works Director as specified for the future Collector street in the Salem Transportation System Plan from the existing terminus of Lone Oak Road SE at Sahalee Drive SE to Rees Hill Road SE.
2. Construct Lone Oak Road SE with a minimum 34-foot-wide full Collector street improvement within the subject property and from the north line of the subject property to Sahalee Drive SE.
3. Construct Lone Oak Road SE with a minimum 34-foot-wide linking street improvement from the south line of the subject property to Rees Hill Road SE.

These conditions of approval ensure that the proposed development has an adequate linking street connection to Lone Oak Road SE at Sahalee Drive SE and secondary linking street connections to Rees Hill Road SE through Devon Avenue SE and Lone Oak Road SE.

Pursuant to Resolution 2018-08, the applicant is also required to pay the applicable reimbursement fee as established in the Lone Oak Road Reimbursement District for

As a condition of development within the S-3 water service area, the applicant shall construct the following facilities as specified in the Water System Master Plan and approved by the Public Works Director:

1. A 12-inch S-3 main in the portion of Lone Oak Road SE within the subject property.
2. A 12-inch S-3 main connecting east/west through the property from Lone Oak Road SE to Devon Avenue SE.
3. A 12-inch S-3 main along the entire frontage of Devon Avenue SE.
4. A 12-inch S-3 main in Lone Oak Road SE from the north line of the subject property to the existing main at the Lone Oak/Sahalee intersection and/or from the south line of the subject property to the existing main in Rees Hill Road.

Based on the topography of the subject property, the S-4 area of the proposed development shall receive domestic service from the S-4 service level and fire service from the S-3 service level. As a condition of development within the S-4 water service area, the applicant shall construct the following facilities as specified in the Water System Master Plan and approved by the Public Works Director:

1. An S-4 domestic pump station with sufficient capacity to serve entire the S-4 water service area between Lone Oak Road SE and Devon Avenue SE.
2. An 8-inch S-4 main from the pump station to the S-4 water service area within the subject property.
3. One or more 8-inch S-4 mains to serve each lot within the S-4 service area.
4. An 8-inch S-4 main extended to the south line of the subject property.
5. One or more S-3 mains that provide adequate fire flow to the entire S-4 area

These improvements ensure that permanent water service is available in accordance with the Water System Master Plan.

**SRC 200.075—Standards for Park Sites**

**Findings:** The applicant shall reserve for dedication prior to development approval that property within the development site that is necessary for an adequate neighborhood park, access to such park, and recreation routes, or similar uninterrupted linkages, based upon the Salem Comprehensive Parks System Master Plan.



## LAND USE APPEAL APPLICATION

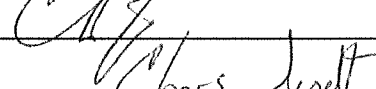
### 1. GENERAL DATA REQUIRED *[to be completed by the appellant]*

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:  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: 

Date: 3/23/18

Receipt No: 18-121880-LD

Appeal Deadline: 3/27/18

Case Manager: 

Payment #

10413805

# 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](http://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.

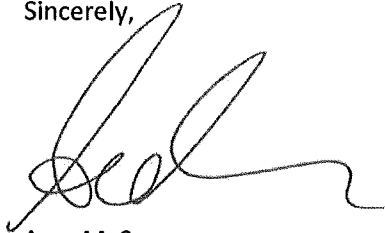
2. Condition of Approval No. 10 is unconstitutional under the Takings Clause of the Fifth Amendment of the United States Constitution and Article I, Section 18 of the Oregon Constitution. The impacts of the proposed development are limited to increasing the expected visits to the City's Parks Facilities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

Of Attorney for Appellant